

No. 12972

United States
Court of Appeals
for the Ninth Circuit

JAMES M. ALSUP, Individually, and as United
States Collector of Internal Revenue for the
District of Hawaii,

Appellant,

vs.

EMIL C. PETERS,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Hawaii.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

For the Plaintiff:

EMIL C. PETERS, Esq.,
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Honolulu 13, Hawaii.

For the Defendant:

UNITED STATES DISTRICT ATTORNEY,
District of Hawaii,
Federal Building,
Honolulu, T. H.

In the United States District Court
for the District of Hawaii

Civil Action, File No. 935

EMIL C. PETERS,

Plaintiff,

vs.

JAMES M. ALSUP, Individually and as United
States Collector of Internal Revenue for the
District of Hawaii,

Defendant.

COMPLAINT

To the Honorable the United States District Court
for the District of Hawaii:

The abovenamed plaintiff complains of the above-
named defendant and for causes of action alleges:

First Cause of Action

1. That the grounds upon which the jurisdiction
depends are that the cause of action
herein alleged arises under a "law providing for in-
ternal revenue" and is for the recovery "of an in-
ternal revenue tax" allegedly "erroneously and
illegally assessed and collected".

2. That the plaintiff, hereinafter referred to as
the "taxpayer", is and during all the times herein-
after mentioned was a resident of Honolulu, City
and County of Honolulu, Territory of Hawaii, and
is a citizen of said Territory and of the United
States of America.

3. That the Honorable James M. Alsup, the defendant abovenamed, on, to wit, October 10, 1947, was and since has been and now is United States Collector of Internal Revenue for the District of Hawaii.

4. That on, to wit, May 28, 1935, the taxpayer and his wife, M. Mapuana Peters, since deceased, being then possessed of certain *person* property other than cash as tenants by the entirety made a transfer of the same by gift, in trust; that on, to wit, March 16, 1936, (the day preceding being Sunday) the taxpayer and his wife made separate returns of the transfer by gift so made by them during the calendar year 1935, by filing with the Collector of Internal Revenue for the District of Hawaii, in duplicate, under oath, separate gift tax returns for that year on Form 709; that in said returns the personal property comprising the gift was listed, and there was also set forth the fair market value for each item thereof; that included in said gift were 5,355 shares of the capital stock of Pineapple Holding Company, Limited, a Hawaiian corporation, the fair market value of the shares of stock of Pineapple Holding Company, Limited being set forth in said return at \$16.75 per share; that in said returns were also set forth the deductions claimed and allowable by law, the net gifts for the preceding calendar years, and such further information as required by law and by regulation made pursuant to law.

5. That on, to wit, March 15, 1944, the taxpayer filed with the Collector of Internal Revenue for the

District of Hawaii, in duplicate, under oath, a gift tax return of transfers by gift made by him during the calendar year 1943, on Form 709; that in said return the taxpayer set forth each gift made by him during the calendar year 1943, which, under Section 1003 of the Internal Revenue Code, should have been included in computing net gifts and deductions claimed and allowable under Section 1004, showing (a) the amount of the net gifts for the calendar year for which the return was prepared, (b) the aggregate sum of net gifts made after June 6, 1932, and each of the preceding calendar years, (c) the aggregate amount of the net gifts for the year for which the return was prepared plus the aggregate sum of net gifts for each of the preceding calendar years, (d) the tax computed upon (c), using the rate schedule in force for the calendar year for which the return was prepared, (e) the tax upon the aggregate amount of gifts for each of the preceding calendar years, as ascertained in (b), using the same rate schedule as used for the calendar year 1943, and (f) the total tax as finally ascertained for the calendar year 1943, as follows:

Total included amount of gifts for year.....	\$21,155.55
Amount of net gifts for year.....	21,155.55
Total amount of net gifts for preceding years....	13,196.37
Total net gifts.....	34,351.92
Tax on total net gifts.....	2,837.51
Tax on net gifts for preceding years.....	638.70
Total tax for 1943.....	2,198.81

6. That on, to wit, February 26, 1947, the Commissioner of Internal Revenue determined that a deficiency existed in the gift taxes returned and paid

by the taxpayer for the calendar year 1943 and advised the taxpayer thereof in writing and, no petition having been filed by the taxpayer with the Tax Court of the United States for a redetermination of the alleged deficiency in the amount of the tax returned and paid by the taxpayer upon transfers of property made by him by gift during the calendar year 1943, assessed against the taxpayer a deficiency in gift taxes for the calendar year 1943 of \$52.71; that the basis of such determination and assessment of deficiency as alleged by the Commissioner of Internal Revenue was that the taxpayer, in his return of gifts made by him during the calendar year 1935, had set forth the fair market value at the date of the gift of shares of stock of Pineapple Holding Company, Limited, at \$16.75 per share; that the Collector of Internal Revenue had found that the fair market value of said shares of stock of Pineapple Holding Company, Limited, on the date of gift, was \$17.125 per share; and that the net gifts of preceding years, as reported by the taxpayer in his return for the calendar year 1943, should have been increased by \$1,004.07 the deficiency in the 1935 return on the one-half interest of the taxpayer in 5,355 shares of stock of Pineapple Holding Company, Limited, and the Collector of Internal Revenue determined the said deficiency as follows:

Total gifts 1943.....	\$33,155.55
Less exclusions	12,000.00
Amount, gifts included.....	21,155.55
Net gifts for 1943	21,155.55
Total net gifts for preceding years:	
1933	1,459.50
1935	12,740.94

Total net gifts	35,355.59
Tax on total net gifts.....	2,973.06
Less tax on net gifts for preceding years.....	721.54
Total tax payable for 1943.....	2,251.52
Total tax assessed	2,198.81
Deficiency	52.71

7. That on, to wit, October 10, 1947, the taxpayer paid to the Collector of Internal Revenue for the District of Hawaii said alleged deficiency of \$52.71, together with interest as required and imposed by law in the sum of \$10.89.

8. That until examination was made in the year 1947 of the taxpayer's gift return for the calendar year 1943 the taxpayer was not advised of any audit of the taxpayer's gift tax return for the calendar year 1935 or of any adjustment or proposed adjustment in the figures reported in said gift tax return for the calendar year 1935; that the taxpayer was never given an opportunity in connection with said gift tax return for the calendar year 1935 to present the position of the taxpayer with respect to the value of shares of the capital stock of Pineapple Holding Company, Limited on May 28, 1935 or to protest or to otherwise resist any increase in the value of said shares for the purpose of the computation of gift tax liability; that the time within which the gift taxes imposed by law upon gifts made by the taxpayer during the calendar year 1935 should have been assessed was, under the provisions of Section 1016 of the Internal Revenue Code, the three years next preceding March 17, 1939; that the fair market value of shares of stock of the Pineapple Holding Company, Limited, on May 28, 1935, the time that the gift was made by the taxpayer in the calendar

year 1935, was a question of fact and not one of law; that for the purpose of computing gift tax liability factual issues involved in determining the value of personal property included in the amount of net gifts of previous years are barred from re-examination by the provisions of Section 1016 of the Internal Revenue Code; and the re-assessment of the gift tax liability of the taxpayer in 1944 for gifts made by him during the calendar year 1935 is illegal and contrary to law.

9. That if the statute is not a bar and under the provisions of the Revenue Code and Treasury Regulations the determination of the aggregate net gift of previous years admits of new findings upon questions of fact, the taxpayer alleges that the fair market value of stock of the Pineapple Holding Company, Limited, on May 28, 1935, was the sum of \$16.75 per share, and a deficiency assessed upon the basis of a fair market value in excess of that amount is illegal and contrary to law.

10. That on, to wit, October 28, 1948, the taxpayer filed with the Collector of Internal Revenue for the District of Hawaii a claim, addressed to the Commissioner of Internal Revenue, for refund of the sum of \$52.71 deficiency gift taxes so paid by him for the calendar year 1943 and interest thereon in the sum of \$10.89, on Form 843, setting forth in detail and under oath each ground upon which a refund was claimed and facts sufficient to apprise the Commissioner of the exact basis thereof; and under date of February 8, 1949, the Commissioner of Internal Revenue disallowed the same.

Wherefore, plaintiff prays judgment against the defendant in the sum of \$63.60, with interest from date of payment.

Second Cause of Action

And for a second and separate and distinct cause of action by plaintiff against defendant, plaintiff alleges:

1. Plaintiff realleges all the allegations in paragraphs 1, 2, 3, 4, 5 and 6 in his first cause of action herein alleged.

2. That on September 8, 1931, at Honolulu, Hawaii, the taxpayer and M. Mapuana Peters, his wife, since deceased, created three express trusts in writing, as joint settlors, for the benefit of each of their three children, by name, Mapuana Smith McComas, nee Peters, Emil C. Peters, Jr., and Elza H. Steiner, nee Peters, by conveying by three separate indentures of trust of even date certain personal property of which they were owners as tenants by the entirety to Hawaiian Trust Company, Limited, a Hawaiian corporation, as trustee; that the three separate indentures of trust were identical in form except as to the name of the beneficiary and the personal property conveyed; that the trustee was thereby directed to pay the net rents, profits and income of the trust estate to the beneficiary for and during the term of his or her natural life with the right of invasion of the principal at the discretion of the trustee in the event of serious illness of or other unforeseen emergency to the beneficiary; that the settlors reserved to themselves and the survivor

of them the right from time to time to change, modify or amend the provisions of the trust but not to revoke the same or to so change it that they or either of them would receive back any of the trust estate or any of the income therefrom.

3. That on January 8, 1942, M. Mapuana Peters, the wife of the taxpayer, died.

4. That on, to wit, December 31, 1943, the taxpayer, as surviving settlor, amended the three indentures of trust of September 8, 1931, by (a) enlarging the powers of the trustee in its discretion to invade the principal, (b) by irrevocably relinquishing and extinguishing the right of the taxpayer, as surviving settlor, to shift or to effect a partial or complete alteration of the income benefits of the trust created by said indentures, and (c) by relinquishing the power of amendment reserved therein; that the three indentures of trust of September 8, 1931, as amended, were identical in form except as to the name of the beneficiary and the personal property subject thereto.

5. That on, to wit, May 28, 1935, at said Honolulu, the taxpayer and his wife, M. Mapuana Peters, since deceased, as aforesaid, created an express trust, in writing, of personal property of which they were possessed as tenants by the entirety, by conveying the same to the Hawaiian Trust Company, Limited, as trustee, upon the following trusts, among others: (a) to pay the net income to the wife for and during the term of her natural life and portions of the principal of the trust estate if and whenever the trustee should in its discretion consider the remain-

ing net income insufficient for her suitable support and maintenance, and, if at any time or times on account of accident, illness, age, infirmities or unforeseen emergency the wife should require the expenditure upon her or for her benefit of the principal, to spend for such purpose such an amount as the trustee might deem reasonably necessary under the circumstances, (b) upon and after the death of the wife, to pay the remaining net income to the taxpayer, if he be then living, for and during the remainder of his natural life, with the right of the trustee to invade the principal similarly as in the case of the wife, and (c) upon the death of the survivor of the settlors, to distribute the remaining trust principal and any unapplied income therefrom to the person or persons and for the respective estates as the survivor of the settlors should, in his or her last will and testament, direct, and, in default of such direction or in the event of the survivor dying intestate, to distribute the same in three aliquot parts to the three existing trusts of September 8, 1931; that by the indenture of trust of May 28, 1935, the settlors reserved to themselves and the survivor of them the right from time to time to change, modify or amend the provisions of the trust but not to revoke the same or to change it so that they or either of them should receive back any of the trust estate; that it was the intention of the settlors, by the qualification attached to their power to change, modify or amend the provisions of the trust, that the inhibition against revocation or receiving back any of the trust estate included both themselves and the survivor of them

and their respective creditors and estates; that at the time of the transfer of said personal property in trust the same was pledged to secure the personal indebtedness of the taxpayer in the sum of Nineteen Thousand Four Hundred Forty (19,440.00) Dollars, and such indebtedness was thereafter paid and discharged by the taxpayer individually from his own moneys, Fourteen Thousand Four Hundred (14,400.00) Dollars of which were paid by the taxpayer in the calendar year 1943 and upon which he paid gift taxes.

6. That in the gift tax return made separately by the taxpayer for the calendar year 1935, as alleged in paragraph 3 of the taxpayer's first cause of action, he reported, in Item C, Schedule A, thereof, a gift of a one-half interest in the personal property conveyed by him as joint settlor by the trust indenture dated May 28, 1935, of the fair market value of \$112,913.75, subject to an indebtedness of \$19,440.00, and of a net value of \$93,473.75, and of a net value to the taxpayer of \$46,736.87; and that he therein computed the amount of net gifts for the year and his gift tax liability as follows:

(1) Amount of gifts for year other than charitable, etc. gifts (Item C, Schedule A).....	\$41,736.87
(2) Amount of charitable, public and similar gifts for year (Item C, Schedule B).....	None
(3) Total amount of gifts for year (Item 1 plus Item 2)	41,736.87
(4) Amount of charitable, public and similar gifts for year (Item C, Schedule B).....	None
(5) Specific exemption claimed (not exceeding \$50,000 less total amount of specific exemption claimed for preceding years)	41,736.87
(6) Total deduction (Item 4 plus Item 5).....	41,736.87
(7) Amount of net gifts for year (Item 3 minus Item 6)	None

that the wife of the taxpayer, in her separate return of gifts made by her during the calendar year 1935, reported a gift of an undivided one-half interest in the same property, similarly as the taxpayer, of a net value of \$46,736.87, and took a deduction for the present value of her life interest in the income from an undivided one-half of the property conveyed in the sum of \$19,366.42, reporting the net value of the property transferred by her at \$27,370.45; and that she reported the amount of gifts for the calendar year 1935, other than charitable, etc., at \$41,736.87 and claimed a specific exemption in that amount.

7. That on January 1, 1944, the taxpayer, as surviving settlor, amended the provisions of the trust indenture of May 28, 1935, by incorporating therein instructions to the Hawaiian Trust Company, Limited, as trustee, to transfer and deliver to itself, as of the 1st day of January, 1944, in its respective capacities as trustee of the three subsisting trusts of September 8, 1931, all of the property except cash of which the trust of May 28, 1935, was then composed, identifying the same accordingly as it should stand possessed, as trustee, of each beneficiary of said trusts of September 8, 1931; that on October 25, 1944, the taxpayer, as such surviving settlor, further amended the provisions of the trust indenture of May 28, 1935, as amended, by incorporating therein instructions to the Hawaiian Trust Company, Limited, as trustee, to pay, as of that date, to itself, in its capacity of trustee respectively for the three children of the surviving settlor, the cash

money remaining included in the trust estate of May 28, 1935, as amended, to wit, the sum of \$484.53, and to stand possessed of a one-third part thereof as trustee respectively for the beneficiaries under said indentures of trust of September 8, 1931; that the trustee conformed forthwith to the respective instructions incorporated by amendment in the trust indenture of May 28, 1935, by the amendments of January 1 and October 25, 1944, respectively, and thereupon and thereafter held and has held and possessed the property subject to said amendments, as trustee of the three trusts of September 8, 1931, as amended; that on October 26, 1944, the trust of May 28, 1935, as amended, was cancelled by mutual consent of the taxpayer, as surviving settlor, and the Hawaiian Trust Company, Limited, as trustee.

8. That on to wit, March 15, 1945, the taxpayer filed with the Collector of Internal Revenue for the District of Hawaii a gift tax return of transfers by gift made by him during the calendar year 1944, on Form 709, in duplicate, under oath; that the taxpayer, in Schedule A, reported the relinquishment by him in 1944 "of certain powers and control with respect to the property and income of a 'Discretionary Trust' created prior to January 1, 1939 (i.e., May 28, 1935) by the taxpayer and his wife now deceased", claimed "that said relinquishment was nontaxable, in conformity with the provisions of Section 1000(e) [1000 (3)] of the Internal Revenue Code, in view of the fact that the transfer in trust under the indenture of May 28, 1935, was treated as a taxable gift and gift tax returns were duly filed

for the calendar year 1935'', and advised that "full details regarding the aforesaid relinquishment together with taxpayer's written consent to treat said transfer of May 28, 1935, as a taxable transfer for the year 1935 and for all periods thereafter, as required by Section 1000(e) [Section 1000(3)] of the Internal Revenue Code'', were "contained in taxpayer's letter, together with accompanying documents attached and made a part of his return''; that at the same time and as a part of said return, under date of March 7, 1945, the taxpayer advised the Commissioner of Internal Revenue, by letter, that, as surviving settlor and grantor in the trust indenture of May 28, 1935, he had, by indentures dated December 31, 1943, January 1, 1944, October 25, 1944, and October 26, 1944, full, true and correct copies of which were attached and made a part thereof, relinquished all power and control with respect to the distribution of the property and income of and from the trust of May 28, 1935, and had exercised and terminated such power and control in the manner therein recited, and that, pursuant to the provisions of Sections 502 and 505 of the Revenue Act of 1943 and Regulation 108, as amended (T.D. 5366), he thereby consented, for all purposes of the chapter of the Revenue Code of 1943 applicable thereto, to treat such relinquishment in the calendar year in which the transfer was effected, to wit, the year 1935, and for all periods thereafter as having been a transfer of property subject to tax under the applicable chapter of the Revenue Code effective May 28, 1935, and since, and prayed that, in

the absence of existing regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury prescribing the form of consent, the within consent be accepted as conformable to Regulation 108, as amended; that neither at the time of so consenting nor prior thereto had the Commissioner of Internal Revenue prescribed with the approval of the Secretary of Treasury regulations in respect to such consent; that the consent so given by the taxpayer was accepted by the Commissioner of Internal Revenue as conformable to Regulation 108, as amended.

9. That on, to wit, September 17, 1947, the Commissioner of Internal Revenue determined that a deficiency existed in the gift taxes returned by the taxpayer for the calendar year 1944 and advised the taxpayer thereof and, no petition having been filed by the taxpayer with the Tax Court of the United States for a redetermination of the alleged deficiency, the Commissioner assessed against the taxpayer a deficiency in his gift tax liability for the calendar year 1944 in the sum of \$7,908.37; that the basis of such determination and assessment of deficiency as alleged by the Commissioner of Internal Revenue was that the taxpayer, in his return of gifts made by him during the calendar year 1944, set forth no tax liability; that the Collector of Internal Revenue found that the taxpayer, in the calendar year 1944 had, by the indentures of amendment of January 1, 1944 and October 25, 1944, exercised a power of appointment over the property transferred by the deceased wife of the taxpayer to the trust created

by the trust indenture of May 28, 1935; and that he determined and assessed the deficiency of the taxpayer in his gift tax liability for gifts made by him during the calendar year 1944 as follows:

Amount of gifts 1944.....	\$51,531.77
Amount of net gifts preceding years.....	35,355.99
Total amount of net gifts.....	86,887.76
Less exclusions	9,000.00
Total net gifts.....	77,887.76
Less specific exemption	None
Total net gifts for tax.....	77,887.76
Tax on total net gifts.....	10,881.43
Tax on net gifts for preceding years.....	2,973.06
Deficiency	7,908.37;

That included in the "Total amount of net gifts of preceding years" of \$13,196.37 reported by the taxpayer for the year 1943, as set forth in paragraph 5 of the first cause of action hereof, is a gift by the taxpayer in the calendar year 1933 of \$1,459.50; that the date of birth of the taxpayer is December 15, 1877; that the present worth at the date of gift of the equitable life estate of the taxpayer in one-half of the income to accrue under the trust of May 28, 1935 was the sum of \$19,336.42; and that the consent of March 7, 1947, alleged in paragraph 8 of this second cause of action, was given by the taxpayer in good faith and in reliance upon the provisions of sections 502 and 505 of the Revenue Act of 1943 and the amendment of Regulation 108 approved May 5, 1944 (T. D. 5366) and in the belief that the relinquishment by the taxpayer of the reserved power of amendment reposed in him as surviving settlor and grantor, by the exercise thereof as herebefore alleged, constituted, under the provisions

of said sections of the Revenue Act of 1943 and said regulation 108 as amended as aforesaid, a tax exempt exercise of a power of appointment of all the property then remaining in the trust created by the trust indenture of May 28, 1935.

10. That on, to wit, October 10, 1947, the taxpayer paid to the Collector of Internal Revenue for the District of Hawaii the amount of said deficiency in gift taxes for the year 1944 as thus determined and assessed, in the sum of \$7,908.37, together with interest as required and imposed by law in the sum of \$1,259.59.

11. That on, to wit, October 28, 1948, the taxpayer filed with the Collector of Internal Revenue for the District of Hawaii a claim addressed to the Commissioner of Internal Revenue for refund of taxes for the calendar year 1944 in the sum of \$7,908.37 and interest in the sum of \$1,259.59, on Form 843, setting forth in detail and under oath each ground upon which a refund was claimed and facts sufficient to apprise the Commissioner of the exact basis thereof; and under date of February 2, 1949, the Commissioner of Internal Revenue disallowed the same.

12. That the assessment of the deficiency for the year 1944 was and is illegal and contrary to law.

Wherefore, plaintiff prays judgment against the defendant in the sum of \$9,167.96 with interest from October 10, 1947.

Dated: September 6, 1949.

/s/ EMIL C. PETERS,

Plaintiff in person.

[Endorsed]: Filed September 7, 1949.

[Title of District Court and Cause.]

ANSWER

James M. Alsup, Collector of Internal Revenue for the District of Hawaii, the defendant above-named, by Ray J. O'Brien, United States Attorney for the District of Hawaii, his attorney, for his answer to the complaint herein respectfully alleges and shows:

To the First Cause of Action

I.

Admits each and every allegation contained in paragraph 1.

II.

Admits each and every allegation contained in paragraph 2.

III.

Admits each and every allegation contained in paragraph 3.

IV.

Denies each and every allegation contained in paragraph 4, except he admits that on or about May 28, 1935, the plaintiff and his wife made a transfer of certain property by gift in trust; for the terms of which defendant refers to the trust instrument; that on March 16, 1936, the plaintiff and his wife filed separate gift tax returns for the calendar year 1935, to which said returns defendant refers for the matters set forth therein.

V.

Denies each and every allegation contained in paragraph 5, except he admits that on March 15, 1944, the plaintiff filed with the Collector of Internal Revenue for the District of Hawaii, a gift tax return of the transfers of gifts made by him during the calendar year 1943, to which said return defendant refers for the matters set forth therein.

VI.

Admits each and every allegation contained in paragraph 6.

VII.

Admits each and every allegation contained in paragraph 7.

VIII.

Denies each and every allegation contained in paragraph 8, except he admits that until examination was made in 1947 of the plaintiff's gift tax return for the calendar year 1943, the plaintiff was not advised of any audit of his gift tax return for the calendar year 1935 or of any adjustment or proposed adjustment of the figures reported in the said gift tax return for the calendar year 1935.

IX.

Denies each and every allegation contained in paragraph 9.

X.

Denies each and every allegation contained in

paragraph 10, except he admits that on October 28, 1948, the plaintiff filed with the defendant a claim for refund of the sum of \$52.71, with interest in the sum of \$10.89.

To the Second Cause of Action

I.

Defendant, answering paragraph 1 of the second cause of action, repeats and realleges paragraphs 1, 2, 3, 4, 5 and 6 of this answer.

II.

Denies each and every allegation contained in paragraph 2, except he admits that on September 8, 1931, plaintiff and his wife created three express trusts in writing for the terms of which defendant refers to the originals thereof.

III.

Admits each and every allegation contained in paragraph 3.

IV.

Denies each and every allegation contained in paragraph 4, except he admits that on December 31, 1943, the taxpayer amended the three indentures of trust dated September 8, 1931; for the terms of these amendments defendant refers to the instruments amending them.

V.

Denies each and every allegation contained in paragraph 5, except he admits that on May 28, 1935,

the plaintiff and his wife created an express trust in writing for the terms of which defendant refers to the original trust instrument.

VI.

Denies each and every allegation contained in paragraph 6, except he admits that plaintiff filed a gift tax return for the calendar year 1935, to which defendant refers for the contents thereof; and that the plaintiff's wife filed a separate gift tax return for the calendar year 1935, to which defendant refers for the contents thereof.

VII.

Admits each and every allegation contained in paragraph 7.

VIII.

Denies each and every allegation contained in paragraph 8, except he admits that on March 15, 1945, the plaintiff filed with the Collector of Internal Revenue for the District of Hawaii, a gift tax return for the calendar year 1944, to which the defendant refers for the contents thereof.

IX.

Denies each and every allegation contained in paragraph 9, except he admits that on September 17, 1947, the Commissioner of Internal Revenue determined a deficiency in plaintiff's gift taxes for the calendar year 1944 in the sum of \$7,908.37 which was subsequently assessed against the plaintiff; that the basis of the Commissioner's determination was

that the plaintiff by the indentures of amendment of January 1, 1944, and October 25, 1944, had exercised a power of appointment over the property transferred by plaintiff's wife to the trust created by the trust indenture of May 8, 1935.

X.

Admits each and every allegation contained in paragraph 10.

XI.

Denies each and every allegation contained in paragraph 11, except he admits that on October 28, 1948, plaintiff filed with the Collector of Internal Revenue for the District of Hawaii, a claim for refund for the sum of \$7,908.37 and interest in the sum of \$1,259.59, to which defendant refers for the contents thereof.

XII.

Denies each and every allegation contained in paragraph 12.

Wherefore, defendant demands judgment dismissing the complaint with costs.

RAY J. O'BRIEN,
United States Attorney,
District of Hawaii.

/s/ By HOWARD K. HODDICK,
Assistant United States Atty.,
District of Hawaii.

Acknowledgment of Service attached.

[Endorsed]: Filed January 13, 1950.

[Title of District Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated by and between the plaintiff in person and the defendant by his attorney, Ray J. O'Brien, United States Attorney for the District of Hawaii, as follows:

1. That the attached photostats of the following enumerated papers and documents identified in subparagraphs (1) to (13), both inclusive hereof, may be admitted in evidence and considered in evidence to the same legal force and effect as the respective originals of said papers and documents, viz.:

(1) Indenture of trust of Plaintiff and wife to Hawaiian Trust Company Ltd., dated May 28, 1935.

(2) Gift tax return of Plaintiff for the calendar year, 1935.

(3) Gift tax return of M. Mapuana Peters, wife of plaintiff for the calendar year, 1935.

(4) Indenture of trust of plaintiff and wife to Hawaiian Trust Company Ltd., of which Mapuana, the daughter of the settlors, is the life beneficiary, dated September 8, 1931.

(5) Amendment of indenture of trust in the last preceding paragraph described, dated December 31, 1943.

(6) Amendment of indenture of trust of May 28, 1935, dated January 1, 1944.

(7) Amendment of indenture of trust of May 28, 1935, as amended, dated October 25, 1944.

(8) Cancellation of indenture of trust of May 28, 1935, as amended, dated October 26, 1944.

(9) Gift tax return of plaintiff for the calendar year 1943.

(10) Gift tax return of plaintiff for the calendar year 1944.

(11) Letter of plaintiff to Commissioner of Internal Revenue, dated March 7, 1945.

(12) Notice of deficiency of gift taxes of plaintiff for the calendar year 1944, dated September 17, 1947.

(13) Treasury Decision No. 5366.

2. They admit:

(1) That on September 20, 1904, and since and until January 8, 1942, plaintiff and M. Mapuana Peters were husband and wife.

(2) That as issue of the marriage of plaintiff and his wife, M. Mapuana Peters, there are three children, by name and date of birth as follows:

Mapuana S.—Born July 5, 1905

Emil C. Jr.—Born Nov. 3, 1906

Elsa H.—Born Dec. 4, 1907.

(3) That all the certificates of stock evidencing the ownership of the corporate stock conveyed in trust by the trust indenture of May 28, 1935, were on that day and thereafter until transferred into the name of Hawaiian Trust Company, Ltd., Trustee in the name of "M. Mapuana Peters and E. C. Peters as joint tenants with right of survivorship and not as tenants in common."

(4) That the three indentures of trust of September 8, 1931, as originally executed and as subse-

quently amended on December 31, 1943, were and are identical in form, and the same respectively as exhibits 1 (4) and 1 (5) identified in paragraph 1, subparagraphs (4) and (5) hereof, except as to the name of the life beneficiary and the personal property subject thereto.

(5) That at the time of the transfer on May 28, 1935, of said personal property in trust a part of the same was pledged to secure the personal indebtedness of the plaintiff in the sum of (\$19,440.00) Nineteen Thousand, Four Hundred Forty Dollars, and such indebtedness was thereafter paid by plaintiff individually from his own moneys, Fourteen Thousand, Four Hundred Dollars (\$14,400.00) of which were paid by plaintiff in the calendar year 1943 and upon which he paid gift taxes.

(6) That the letter of plaintiff to the Commissioner of Internal Revenue dated March 7, 1945, identified in paragraph 1, subparagraph (10) hereof was on, to-wit, March 7, 1945, mailed by plaintiff to the Commissioner of Internal Revenue by U. S. Registered Mail addressed to him at Washington, D. C., and the Commissioner of Internal Revenue never made any reply thereto.

(7) That the date of birth of the taxpayer is December 15, 1877.

(8) That the present worth at the date of gift of the equitable life estate of the taxpayer in one-half of the income to accrue under the trust of May 28, 1935, was the sum of Nineteen Thousand, Three

Hundred Thirty-Six Dollars and Forty-two cents (\$19,336.42).

(9) That on May 28, 1935, the highest and lowest quoted selling prices of shares of the Pineapple Holding Company, Ltd., on the Honolulu Stock Exchange were \$17.50 and \$16.75 per share respectively.

3. That the plaintiff if called as a witness on his own behalf would testify:

(1) That the personal property transferred by the indenture of trust of May 28, 1935, originally belonged to the plaintiff, and the consideration with which the same was acquired by him was provided by plaintiff out of his own monies and properties, and plaintiff's wife did not contribute thereto either in whole and in part.

4. That the within stipulation in order to its effectiveness be approved by a judge of the above named court.

Dated: May 25, 1950.

/s/ EMIL C. PETERS,
Plaintiff in Person.

Dated: October 5, 1950.

/s/ RAY J. O'BRIEN,
U. S. Attorney for the District
of Hawaii.

Approved:

/s/ D. E. METZGER,
Judge United States District Court for the District
of Hawaii.

EXHIBIT No. 1 (1)

This Agreement made this 28th day of May, 1935 by and between Emil Cornelius Peters and Mary Mapuana Peters, husband and wife, of Honolulu, Hawaii, parties of the first part, hereinafter called the "Settlers" and Hawaiian Trust Company, Limited, an Hawaiian corporation, having its principal office in said Honolulu, part of the second part, hereinafter called the "Trustee", which expression shall be deemed to include all successors in trust hereunder;

Witnesseth

That the Settlers in consideration of the premises and the terms, covenants and conditions herein expressed on the part of the Trustee to be observed and performed, do hereby grant, assign, transfer, set over and deliver unto said Hawaiian Trust Company, Limited in its capacity of Trustee hereunder, all of the following property, to-wit:

Three Thousand (3000) shares of the capital stock of Pineapple Holding Company, Limited, evidenced by Certificate No. H-3806; Fifty (50) shares Hawaiian Trust Company, Limited, evidenced by Certificate No. 777; Six Hundred and Five (605) shares Hawaiian Pineapple Holding Company, Limited, evidenced by Certificate No. H-2285; One Thousand Seven Hundred and Fifty (1750) shares Pineapple Holding Company, Limited, evidenced by Certificate No. H-2283; One Hundred Fifty (150) shares of the capital stock of Bishop National Bank of Hawaii, at Honolulu, evidenced by Certificate No. 530; Two Hundred Fifteen (215) shares of the capital stock

Exhibit No. 1 (1)—(Continued)

of the Bishop Trust Company, Limited, evidenced by Certificates Nos. B-1198 for Fifteen (15) shares, B1196 for One Hundred (100) shares and B1197 for One Hundred (100) shares; Twenty-five (25) shares of the capital stock of the Bank of Hawaii, Limited, evidenced by Certificate No. B164; Twenty-five (25) shares of the capital stock of the Hawaiian Agricultural Company, Limited, evidenced by Certificates Nos. 1036 for Twenty (20) shares and 1037 for Five (5) shares; Five (5) shares of the capital stock of the Inter-Island Steam Navigation Company, Limited, evidenced by Certificate No. 4171, Fifty (50) shares of the Pepeekeo Sugar Company, evidenced by Certificates Nos. 373; Five (5) shares of the Waianae Company, evidenced by Certificate No. 560.

To have and to hold the same and all proceeds thereof and all property whatsoever in which the same or any part thereof may at any time or times be resolved by investment, reinvestment, exchange, or otherwise unto the said Trustee and its successors in trust hereunder, subject to the terms, conditions, charges and powers hereinafter mentioned and upon the following uses and trusts, namely:

1. To hold and manage the trust estate and to receive the rents, profits and income thereof and to pay from said property and from said rents, profits and income, all expenses and disbursements properly chargeable thereto respectively, and to deal with and dispose of the remaining rents, profits and income in the manner and for the uses and purposes hereinafter set forth.

Exhibit No. 1 (1)—(Continued)

2. To pay the remaining net rents, profits and income to the Settlor, Mary Mapuana Peters for and during the term of her natural life in monthly payments as nearly equal in amount, as may in the discretion of the Trustee be practicable, and also portions of the principal of the trust estate, if and whenever it shall in its discretion consider the remaining net rents, profits and income insufficient for her suitable support and maintenance. If at any time or times on account of accident, illness, age, infirmities or unforeseen emergency, the said Settlor, Mary Mapuana Peters, shall require the expenditure upon her or for her benefit of principal hereof, said Trustee is hereby authorized to appropriate and expend for such purposes such an amount as it may deem reasonably necessary under the circumstances.

3. The income herein directed to be paid to the said Settlor, Mary Mapuana Peters, shall be made personally to her or upon her order in receipt in writing, that is, free from the interference or control of her creditors and never by way of anticipation or assignment, voluntary or involuntary.

4. Upon and after the death of the Settlor, Mary Mapuana Peters, to pay the remaining net rents, profits and income, to the Settlor, Emil Cornelius Peters, if he be then living, for and during the remainder of his natural life, in monthly payments as nearly equal in amount, as may in the discretion of the Trustee be practicable, and also portions of the principal of the trust estate, if and whenever it shall

Exhibit No. 1 (1)—(Continued)

in its discretion consider the remaining net rents, profits and income insufficient for his suitable support and maintenance. If at any time or times on account of accident, illness, age, infirmities or unforeseen emergency, the said Settlor, Emil Cornelius Peters, shall require the expenditure upon him or for his benefit of principal hereof, said Trustee is hereby authorized to appropriate and expend for such purposes such an amount as it may deem reasonably necessary under the circumstances.

5. The income herein directed to be paid to the said Settlor, Emil Cornelius Peters shall be made personally to him or upon his order or receipt in writing, that is, free from the interference or control of his creditors and never by way of anticipation or assignment, voluntary or involuntary.

6. The Settlers hereby expecially reserve unto themselves and the survivor of them, the rights:

(a) from time to time to change, modify or amend the provisions of this trust instrument, but not to revoke the same or to change it, that they or either of them, will receive back any of the trust estate;

(b) by written instrument, to change the Trustee under this instrument, whether named or appointed by virtue of this instrument or otherwise, and to appoint a new Trustee in the place and stead of the Trustee so relieved; and

(c) to appoint a successor trustee to fill any vacancy which may occur in the office of Trustee. Upon

Exhibit No. 1 (1)—(Continued)

every appointment of a new Trustee the trust property and all interest therein shall immediately become vested in the new Trustee, and every such new Trustee shall thereupon have all the powers, authority and discretion to perform the trust of these presents as though originally named in this instrument, and without necessity of any conveyance to it, him or her by the retiring Trustee, if any.

7. The Settlers further reserve unto themselves and the survivor of them the right at any time to grant, deliver, assign and set over and by last will and testament to devise and bequeath to said Trustee, for the purpose and upon the trusts hereof, other and additional property, real, personal and/or mixed, and the same shall upon grant, delivery or assignment to the Trustee or upon being vested in or distributed to it, become subject to all the conditions or terms of this indenture of trust in like manner and to the same effect as though the same were now included herein.

8. The Trustee shall have the following powers in addition to those otherwise expressly or by necessary implication, to it, herein granted:

(a) To hold, possess, manage, control, sell, transfer, convey, assign, convert, mortgage, pledge, lease, invest and reinvest in such property real and personal, tangible and intangible including the capital stock of local and foreign private corporations, as it may approve and otherwise deal with the whole and every part of the property which shall, from time to time, constitute the trust estate hereunder

Exhibit No. 1 (1)—(Continued)

according to its sole judgment and discretion, in every way as if the Trustee were the absolute owner thereof for its own benefit and without any limitation upon its power and authority so to do either by statute or otherwise; provided, however, that while and so long as the Settlor Emil Cornelius Peters shall live and be sui juris, no sale or exchange of the whole or any part of the trust property, nor investments, nor reinvestments of the same, shall be made by the Trustee without the prior written approval and consent of the Settlor, Emil Cornelius Peters.

(b) Specifically, but without limitation of the generality of the foregoing power and authority, the Trustee in its sole judgment and discretion subject to such approval and consent of the Settlor Emil Cornelius Peters, may: (1) sell all or any part of the property at any time included in the trust estate, at public auction or at private sale, for cash or credit, or partly for cash and partly for credit, upon such terms and/or conditions as it may approve. (2) Lease all or any part of the real property included in the trust estate with or without option to purchase, and for a period or periods which may extend beyond the termination of the trust, and (3) execute and deliver all deeds, leases and other instruments incidental to the performance of its powers hereunder.

The Trustee, may in its discretion settle, adjust and compromise any claims which may be made upon, or which may be asserted by or on behalf of,

Exhibit No. 1 (1)—(Continued)

said trust estate or any property included therein.

No person or corporation buying from or otherwise dealing with the Trustee shall be under any obligation to see to the application of any purchase money or other consideration received, or to the authority of the Trustee.

9. It shall be the duty of the Trustee:

(a) To keep all buildings and improvements in good order, condition and repair;

(b) To pay and discharge all taxes, rates and assessments of every kind and discription that may be levied and assessed upon or may become payable in respect of the trust estate or any part thereof or the respective interests of any beneficiary therein;

(c) To pay and discharge the reasonable costs and expenses incident to the administration of the trust hereby created including its commission;

(d) To render to the Settlers or the survivor of them quarterly a statement showing receipts and disbursements made in pursuance hereof during the accounting period and to render to the Settlers of the survivor of them annually an inventory of principal and income on hand at the concluding day of the year. The terms "quarterly" and "annually" refer to the calendar year. The Trustee shall not be under any obligation to file any account in any court or tribunal whatsoever. Nor shall it be required to give any bond as Trustee; and

(e) Upon the request of the Settlers, or the survivor of them, to resign as Trustee hereunder.

10. Upon the death of the survivor of the Settlers,

Exhibit No. 1 (1)—(Continued)

the Trustee shall distribute the remaining trust principal subject hereto, and any unapplied income therefrom, to the person or persons and for the respective estates as the survivor of the Settlers shall in his or her last Will and Testament direct, and in default of such direction or in the event of the survivor of the Settlers dying intestate, the Trustee shall distribute the same or cause the same to be distributed to the Hawaiian Trust Company, Limited or its successor in trust, and the said Hawaiian Trust Company, Limited or its successor in trust shall thereupon and thereafter stand seized and possessed of a one-third ($1/3$) part, share or interest therein in severalty, as Trustee under the terms and provisions of and upon the uses and trusts expressed in the certain indenture of trust made between the Settlers and the said Trustee, dated September 8, 1931, in which Mapuana Smith McComas, nee Peters, is beneficiary; a one-third ($1/3$) part, share or interest therein in severalty as Trustee under the terms and provisions of and upon the uses and trusts expressed in the certain indenture of trust made between the Settlers and the said Trustee, dated September 8, 1931, in which Emil Cornelius Peters, Junior, is the beneficiary; and the remaining one-third ($1/3$) part, share or interest therein in severalty as trustee under the terms and provisions of and upon the uses and trusts expressed in the certain indenture of trust made between the Settlers and the said Trustee, dated September 8, 1931, in which Elsa Hildebrandt Peters is the beneficiary.

Exhibit No. 1 (1)—(Continued)

11. The Trustee shall consider and treat all stock dividends and rights to subscribe received by it as principal and not as income; it shall consider and treat all cash dividends, whether regular or extraordinary, unless paid out of capital, as income and not as principal; it shall charge all premiums on investments against principal and shall credit all discounts on investments to principal; and it shall have full power of determining the proportion and mode in which special assessments and taxes for street improvements and other special purposes shall be borne as between principal and income, and every such determination shall be conclusive on all parties interested.

12. In any case in which the Trustee is required to divide the principal of said trust estate into parts or shares and to distribute all or any thereof, it is authorized and empowered in its sole discretion to make division or distribution in kind or partly in kind and partly in money and to distribute to any distributee property similar to or different from that distributed to any other distributee. The judgment of the Trustee concerning the values for the purpose of such division and distribution of the items of property in said trust estate shall be binding and conclusive on all parties interested. In any case in which the Trustee is required to divide the principal of said trust estate into parts or shares and to distribute any or all thereof, the term "principal" shall be deemed to include any and all unpaid income and accumulations.

Exhibit No. 1 (1)—(Continued)

13. The beneficiaries of said trust estate shall be without power of disposition or anticipation in any manner of any income or principal payable to them respectively prior to the actual receipt of the same and shall have no right or power to use their interests in said income or principal as collateral security or to pledge or mortgage the same in any manner. Said income and principal and their respective interests therein shall not be liable for any debt of theirs or be subject to judgment against them or to garnishment, attachment, execution or other legal process in aid or execution of any judgment or claim against them respectively.

14. The Trustee shall receive as compensation for its service hereunder five per cent (5%) on the gross income derived from said trust estate and also two and one-half per cent (2½ %) on the principal of said trust estate on the final payment of the same, either in cash or in kind, and either in whole or in part, at the termination of the trust or at any prior time. In the event of distribution to Hawaiian Trust Company, Limited as Trustee, to stand seized and possessed of equal one-third (1/3) parts, shares or interests in the trust estate under the terms and provisions and upon the uses and trusts expressed in the respective indentures in paragraph ten hereof referred to, such distribution shall not be considered a "final payment" as that term is employed in this paragraph.

Exhibit No. 1 (1)—(Continued)

City and County of Honolulu,
Territory of Hawaii—ss.

On this 28th day of May, A. D., 1935, before me appeared F. W. Jamieson and U. J. Rainalter to me personally known, who being by me duly sworn, did say that they are the Vice-President and Vice-President and Secretary respectively of Hawaiian Trust Company, Limited, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and the said F. W. Jamieson and U. J. Rainalter acknowledged said instrument to be the free act and deed of said corporation.

/s/ ALICE I. DOHERTY,

Notary Public, First Judicial Circuit, Territory of
Hawaii.

GIFT TAX RETURN

CALENDAR YEAR 1935

(TO BE FILED IN DUPLICATE UNDER THE PROVISIONS OF THE
GIFT TAX ACT OF 1925, AS AMENDED)

(Place for use of Collector)

RECEIVED

NAME OF DONOR **EMIL C. PETERS**
ADDRESS **Honolulu, T. H.**
CITIZENSHIP **United States**
RESIDENCE **Honolulu, T. H.**

Have you (the donor), during the calendar year indicated above, without an adequate and full consideration in money or money's worth, made any transfer exceeding \$5,000 in value (or regardless of value if a future interest) for the making of an irrevocable trust for the benefit of another? **No**
If making additions to an irrevocable trust previously created for the benefit of another? **No**
If purchasing a life insurance policy (other than one purchased for the purpose of reversion and then sold during the year) or transferring a policy of reversion and then sold during the year? **No**
If purchasing a life insurance policy, or by making a beneficiary of a policy, without releasing any of the legal incidents of ownership, therein? **No**
If paying a premium under a life insurance policy to which the future value of the legal incidents of ownership and the amount of which are payable to a beneficiary other than yourself or your estate? **No**
If surrendering such a contract and receiving as your cash value or in part with or without and without an annuity by the annuity? **No**
If any value realized, direct or indirect, whereby another received a gift? **No**
If the answer is "Yes" to any of the foregoing, such transfer should be fully disclosed under schedule A or B.

COMPUTATION OF AMOUNT OF NET GIFTS FOR YEAR

1. Amount of gifts for year other than charitable, etc., gifts (item c, schedule A) **41,736.87**
2. Amount of charitable, public, and similar gifts for year (item c, schedule B) **None**
3. Total amount of gifts for year (item 1 plus item 2) **41,736.87**
4. Amount of charitable, public, and similar gifts for year (item c, schedule B) **None**
5. Specific exemption claimed (not exceeding \$50,000 less total amount of specific exemption claimed for preceding years) **41,736.87**
6. Total deductions (item 4 plus item 5) **41,736.87**
7. Amount of net gifts for year (item 3 minus item 6) **None**

COMPUTATION OF TAX

1. Amount of net gifts for year (item 7, above) **None**
2. Total amount of net gifts for preceding years (item b, schedule C) **None**
3. Total net gifts (item 1 plus item 2) **None**
4. Tax computed on item 3 **None**
5. Tax computed on item 2 **None**
6. Tax on net gifts for year (item 4 minus item 5) **None**

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Gift Tax Act of 1925, as amended, and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfers disclosed herein under schedules A or B was made by me (the donor) during said calendar year.

Sworn to and subscribed before me this **16th** day of **April**, 193**6**

NOTARIAL
SEAL

(Name and title of officer administering oath)
Notary Public, State of Hawaii

AFFIDAVIT

I swear (or affirm) that I prepared this return for the person named herein and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability of which I have any knowledge.

Sworn to and subscribed before me this **16th** day of **April**, 193**6**

NOTARIAL
SEAL

(Name and title of officer administering oath)
Notary Public, State of Hawaii

HAWAIIAN TRUST CO., LTD.
BY **W. C. Camp**
Attorney at Law

SCHEDULE A—Gifts During Year Other than Charitable, Pub^l and Similar Gifts

ITEM NO.	DESCRIPTION OF GIFT, MOTIVE, DONEE'S NAME AND ADDRESS, AND RELATIONSHIP TO DONOR	DATE OF GIFT	VALUE AT DATE OF GIFT
			\$
(a) Total	As per schedule attached		\$ 46,736.87
(b) Less total exclusions not exceeding \$5,000 for each donee (except future interests)			\$ 5,000.00
(c) Included amount of gifts for year other than charitable, etc., gifts			\$ 41,736.87

SCHEDULE B—Charitable, Public, and Similar Gifts During Year

ITEM NO.	DESCRIPTION OF GIFT, NAME AND ADDRESS OF DONEE, AND CHARACTER OF INSTITUTION	DATE OF GIFT	VALUE AT DATE OF GIFT
	None in Excess of \$5000.		\$ None
(a) Total			\$ None
(b) Less total exclusions not exceeding \$5,000 for each donee (except future interests)			\$ None
(c) Included amount of charitable, public, and similar gifts for year			\$ None

SCHEDULE C—Returns, Amounts of Specific Exemption, and Net Gifts for Preceding Years (Subsequent to June 6, 1932)

CALENDAR YEAR	COLLECTION DISTRICT IN WHICH PRIOR RETURN WAS FILED	AMOUNT OF SPECIFIC EXEMPTION	AMOUNT OF NET GIFTS
1932	None	\$	\$
1933	Honolulu	1459.50	None
1934	None		
(a) Total amount of specific exemption claimed for preceding years		\$ 1459.50	
(b) Total amount of net gifts for preceding years			\$ None

Form 706
TREASURY DEPARTMENT
(OFFICIAL USE ONLY)
Revised No. 1-1-55

GIFT TAX RETURN

CALENDAR YEAR 193-5

(TO BE FILED IN DUPLICATE UNDER THE PROVISIONS OF THE
GIFT TAX ACT OF 1932, AS AMENDED)

(By) to of Colombia
RECEIVED

NAME OF DONOR MARY MAPUANA PETERS
ADDRESS Honolulu, T. H.
CITIZENSHIP United States
RESIDENCE Honolulu, T. H.

Have you (the donor), during the calendar year indicated above, without an adequate and full consideration in money or money's worth, made any transfer exceeding \$5,000 in value (or regardless of value if a future interest) as follows? Answer "Yes" or "No."

1. By the creation of an irrevocable trust for the benefit of another Yes
2. By making additions to an irrevocable trust previously created for the benefit of another No
3. By permitting a beneficiary of a trust to exercise the power of revocability and those during the year not to exercise it, whether such trust was created before or after the enactment on June 8, 1932, of the Gift Tax Act of 1932 No
4. By relinquishing a power to revoke a trust created for the benefit of another No
5. By permitting another to withdraw funds from a joint bank account which were deposited by you No
6. By irrevocably assigning a life insurance policy, or by naming a beneficiary of a policy, without retaining any of the legal incidents of ownership No
7. By creating a trust, whether or not the income of the trust is paid to a beneficiary other than yourself or your estate No
8. By receiving (directly, indirectly or through a third party) or for your estate or dependent child, interest in, or income from, any property which was received by the decedent No
9. By any other method, direct or indirect, whereby another received a gift No

If the answer is "Yes" to any of the foregoing, such transfer should be fully disclosed under schedule A or B.

COMPUTATION OF AMOUNT OF NET GIFTS FOR YEAR

1. Amount of gifts for year other than charitable, etc., gifts (item c, schedule A)	\$27,370.45	
2. Amount of charitable, public, and similar gifts for year (item c, schedule B)	None	
3. Total amount of gifts for year (item 1 plus item 2)		\$27,370.45
4. Amount of charitable, public, and similar gifts for year (item c, schedule B)	None	
5. Specific exemption claimed (not exceeding \$50,000, less total amount of specific exemption claimed for preceding years)	27,370.45	
6. Total deductions (item 4 plus item 5)		27,370.45
7. Amount of net gifts for year (item 3 minus item 6)		None

COMPUTATION OF TAX

1. Amount of net gifts for year (item 7, above)		None
2. Total amount of net gifts for preceding years (item b, schedule C)		None
3. Total net gifts (item 1 plus item 2)		None
4. Tax computed on item 3		
5. Tax computed on item 2		
6. Tax on net gifts for year (item 4 minus item 5)		None

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Gift Tax Act of 1932, as amended, and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfers or transfers disclosed herein under schedules A or B was made by me (the donor) during said calendar year.

NOTARIAL
SEAL

Sworn to and subscribed before me this 16th

day of August, 1936

(Signature and title of official administering oath)

Mary Mapuana Peters
(Signature of donor or executor)

AFFIDAVIT

I swear (or affirm) that I prepared this return for the person named herein and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability of which I have any knowledge.

NOTARIAL
SEAL

Sworn to and subscribed before me this 16th

day of August, 1936

(Signature and title of official administering oath)

HAWAIIAN TRUST CO. LTD

BY [Signature]
(Signature of person preparing return)

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SCHEDULE A. In During Year Other than Charitable, Paid and Similar Org.

ITEM NO.	DESCRIPTION OF GIFT, MOTIVE, DONEE'S NAME AND ADDRESS, AND RELATIONSHIP TO DONOR	DATE OF GIFT	VALUE AT DATE OF GIFT
Total			27,370.45
Less total exclusions not exceeding \$5,000 for each donee (except future interests)			
Included amount of gifts for year other than charitable, etc., gifts			27,370.45

SCHEDULE B.—Charitable, Public, and Similar Gifts During Year

ITEM NO.	DESCRIPTION OF GIFT, NAME AND ADDRESS OF DONOR, AND CHARACTER OF INSTITUTION	DATE OF GIFT	VALUE AT DATE OF GIFT
	None in excess of \$5000.		\$ None
(c) Total			\$
(d) Less total exclusions not exceeding \$5,000 for each donee (except future interests)			\$
(e) Included amount of charitable, public, and similar gifts for year			\$ None

SCHEDULE C.—Returns, Amounts of Specific Exemption, and Net Gifts for Preceding Years (Subsequent to June 6, 1932)

SCHEDULE C.—Returns, Amounts of Specific Exemption, and Net Gifts for Preceding Years (Subsequent to June 4, 1932)

CALENDAR YEAR	COLLECTION DISTRICT IN WHICH PRIOR RETURN WAS FILED	AMOUNT OF SPECIFIC EXEMPTION	AMOUNT OF NET GIFTS
1932	None	\$	\$
1933	Honolulu	None	None
1934	None	1,459.50	"
		None	"
Total amount of specific exemption claimed for preceding years		\$ 1,459.50	
Total amount of net gifts for preceding years			None

MARY MAPUANA PETERS

Schedule A - 1935 Gift Tax

<u>Item No.</u>	<u>Description</u>	<u>Date of Gift</u>
One-half interest in following property jointly owned with husband, Emil C. Peters, conveyed under irrevocable deed of Trust dated May 28, 1935 to Hawaiian Trust Co. Ltd., Trustee, subject to a total indebtedness at date of transfer of \$19,440. (For copy of trust deed see Gift Tax return of Emil C. Peters)		
	<u>Shares</u>	
1	5355 Pineapple Holding Co. @ 16 1/2 ^{917.42} \$89,596.25 (1750 shs Pledged to Bishop 1st Natl Bk) (605 " " " Bank of Hawaii)	5/28/35
2	50 Hawaiian Trust Co. Ltd. @ 175 ¹¹³ 8,750.00 (50 shs. Pledged to Bank of Hawaii)	-
3	150 Bishop National Bank of Haw @ 25 ^{62.1} 3,750.00	-
4	215 Bishop Trust Co. Ltd. @ 14 1/2 ^{11.3} 3,117.50	-
5	25 Bank of Hawaii @ 180 ²⁵ 4,500.00	-
6	25 Hawaiian Agricultural Co. @ 35 875.00	-
7	5 Inter-Island S. N. Co. @ 22 1/2 112.50	-
8	50 Pepeekeo Sugar Co. @ 28 ^{628.3} 1,400.00	-
9	5 Waianae Co. @ 142 1/2 ^{11.3} 712.50	-
	<u>Total Property in Trust</u>	\$112,913.75
	<u>Less indebtedness at May 28, 1935</u>	19,440.00
	Bishop 1st Natl Bank \$8000.00	
	Bank of Hawaii 11440.00	
	<u>Net Value of Property in Trust</u>	<u>\$93,473.75</u>
	<u>One-half Interest</u>	<u>\$46,736.87</u>
	<u>Less Life Interest of Mary Mapuana Peters reserved under terms of Trust. at age 57 (46,736.87 x 4% x 10.35931)</u>	<u>19,368.42</u>
	<u>Net Value of Property Transferred by Donor</u>	<u>\$27,370.45</u>

EXHIBIT No. 1 (4)

This Indenture made this 8th day of September, A. D. 1931 by and between Emil Cornelius Peters and Mary Mapuana Peters, husband and wife, whose residence and postoffice address is No. 653 Wyllie Street, Honolulu, City and County of Honolulu, Territory of Hawaii, parties of the first part, hereinafter called the "Settlors," and Hawaiian Trust Company, Limited, an Hawaiian corporation, whose principal place of business and postoffice address is No. 120 South King Street, Honolulu aforesaid, party of the second part, hereinafter called the "Trustee," which expression shall be deemed to include all successors in trust hereunder,

Witnesseth

That the settlors in consideration of their love and affection for their daughter, Mapuana Smith Peters, hereinafter called the "Beneficiary," and also in consideration of the terms, covenants and conditions in this instrument expressed on the part of the trustee to be observed and performed, do hereby grant, assign, transfer, set over and deliver unto said Hawaiian Trust Company, Limited in its capacity as trustee hereunder all of the following property, to-wit:

One Hundred (100) shares of the capital stock of the Hawaiian Pineapple Company, Limited, an Hawaiian corporation, evidenced by Certificate H1085.

To Have and to Hold the same and all proceeds

Exhibit No. 1 (4)—(Continued)

thereof and all property whatsoever into which the same may, or any part thereof, at any time or times be resolved by investment, reinvestment, exchange or otherwise, unto the said trustee and its successors in trust hereunder subject to the terms, conditions, charges and powers hereinafter mentioned and upon the following uses and trusts, namely:

1. To hold and manage the trust estate and to receive the rents, profits and income thereof and to pay from said property and from said rents, profits and income, all expenses and disbursements properly chargeable thereto respectively and to deal with and dispose of the remaining rents, profits and income in the manner and for the uses and purposes hereinafter set forth.

2. To pay the remaining net rents, profits and income to said beneficiary for and during the term of her natural life in quarterly payments or oftener as the trustee shall deem expedient.

3. The income herein directed to be paid to the beneficiary shall be made personally to her or upon her order or receipt in writing, that is, free from the interference or control of her creditors and never by way of anticipation or assignment, voluntary or involuntary. Moreover, said income shall be free from the control, liabilities or interference of any husband that said beneficiary may have.

4. If at any time or times on account of serious illness or other unforeseen emergency, the beneficiary shall, in the opinion of the trustee, imperatively require the expenditure upon her or for her

Exhibit No. 1 (4)—(Continued)

benefit of principal hereof, said trustee is hereby authorized to appropriate and expend for such purpose such an amount as it may deem necessary under the circumstances.

(5) The settlors hereby especially reserve to themselves and the survivor of them the rights (a) from time to time to change, modify or amend the provisions of this trust deed but not to revoke the same or to so change it that they or either of them will receive back any of the trust estate or any income therefrom; (b) by written instrument to change the trustee under this instrument, whether named or appointed by virtue of this instrument or otherwise, and to appoint a new trustee in the place and stead of the trustee so relieved; and (c) to appoint a successor trustee to fill any vacancy which may occur in the office of trustee. Upon every appointment of a new trustee, the trust property and all interest thereof shall immediately become vested in the new trustee, and every such new trustee shall thereupon have all the powers, authority and discretion to perform the trust of these presents as though originally named in this instrument, and without necessity of any conveyance to it, him or her by the retiring trustee, if any.

6. The settlors further reserve unto themselves and the survivor of them the right at any time to deliver, assign and set over and by last will and testament to devise and to bequeath to said trustee for the use and benefit of the beneficiary hereunder, other and additional property, real, personal or

Exhibit No. 1 (4)—(Continued)

mixed, and the same shall upon delivery or assignment to the trustee, or upon being vested in or distributed to it, become subject to all the conditions and terms of this indenture in like manner and to the same effect as though the same were now included herein.

7. The trustee shall have the following powers in addition to those otherwise expressly or by necessary implication to it herein granted:

(a) To invest and reinvest the personal property of the trust estate and to vary the securities in which the same from time to time may be invested.

(b) To buy, sell, mortgage, lease and otherwise acquire and dispose of real property and estates therein.

(c) To keep all buildings and improvements in good order, condition and repair.

(d) To pay and discharge all taxes, rates and assessments of every kind and description that may be levied or assessed upon or may become payable in respect of the trust estate or any part thereof or the interest of the beneficiary therein.

(e) To pay and discharge the reasonable costs and expenses incident to the administration of the trust hereby created, including its commissions.

Any lease executed by the trustee hereunder may be for such term as the trustee in its discretion may deem advisable, but in no event to exceed thirty (30) years. Nor shall the personal property of the trust estate be reinvested or varied by the trustee during the lifetime of the settlors or the survivor of them

Exhibit No. 1 (4)—(Continued)

and while they are respectively sui juris, without their, his or her previous written consent thereto.

9. Stock dividends received by the trustee shall not be distributed or be distributable as income, but shall be added to and form and become a part of principal. Otherwise, the final determination of what constitutes principal of the trust estate or the gross income thereof is committed to the absolute and uncontrolled discretion and power of the trustee.

10. It shall be the duty of the trustee:

(a) To render to the beneficiary annually a statement showing receipts and disbursements made in pursuance hereof during the accounting period and an inventory of principal and income on hand at the concluding day of the accounting period.

(b) Upon the death of the beneficiary hereunder, to distribute absolutely and in fee simple the remaining trust principal subject hereto and any unapplied income therefrom in the manner following, that is to say:

1. In the event of the beneficiary dying leaving issue, to distribute the same equally to the beneficiary's children and the issue of any deceased child by right of representation; and if there is no child of the beneficiary living at her death, to distribute the same to all of her other lineal descendants. If all of the said descendants are in the same degree of kindred to the beneficiary, they shall share per capita, that is, equally; otherwise, they shall share per stirpes, that is, by each of the children taking a

Exhibit No. 1 (4)—(Continued)

share, and the grandchildren, the children of a deceased child taking a share, to be equally divided among themselves.

2. If the beneficiary shall leave no issue, to distribute the same to her brother and sister, viz: E. C. Peters Jr. and Elsa H. Peters, and to their children by right of representation. If either said brother or said sister shall be dead without leaving children him or her respectively surviving, then the share of the one so dying shall go to the survivor of said brother or sister.

3. If the beneficiary shall leave no issue nor brother or sister nor children of any deceased brother or sister, to distribute the same to such person or persons as the said beneficiary may by her last will direct, or in default of such will and direction, to the heirs at law of said beneficiary absolutely and in accordance with the laws of descent of the Territory of Hawaii then obtaining.

The words "issue," "children" and "grandchildren," wherever in this paragraph employed, shall not be understood to mean or include, but on the contrary to exclude children by adoption.

(c) To deliver to the beneficiary a full, true and correct copy hereof.

(d) Upon the request of the settlors or the survivor of them, to resign as trustee hereunder.

11. Purchasers from the said trustee of any prop-

Exhibit No. 1 (4)—(Continued)

I hereby acknowledge receipt this.....day of September, 1931 of a full, true and correct copy of the foregoing indenture of trust.

Beneficiary

City and County of Honolulu,
Territory of Hawaii—ss.

On this 8th day of September, A. D. 1931, before me personally appeared Emil Cornelius Peters and Mary Mapuana Peters, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

/s/ H. J. EVENSEN,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

City and County of Honolulu,
Territory of Hawaii—ss.

On this 8th day of September, A. D. 1931, before me appeared P. K. McLean and C. J. Birnie, to me personally known, who being by me duly sworn did say that they are the vice-president and assistant secretary respectively of Hawaiian Trust Company, Limited and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said P. K. McLean and C. J.

Exhibit No. 1 (4)—(Continued)

Birnie acknowledged said instrument to be the free act and deed of said corporation.

/s/ H. J. EVENSEN,

Notary Public, First Judicial Circuit, Territory of Hawaii.

EXHIBIT No. 1 (5)

This Indenture made this 31st day of December, A. D. 1943, by and between Emil Cornelius Peters, whose residence and post office address is No. 20 Dowsett Avenue, Honolulu, City and County of Honolulu, Territory of Hawaii, party of the first part, hereinafter called the "surviving settlor", and Hawaiian Trust Company, Limited, a Hawaiian corporation, whose principal place of business and post office address is No. 120 South King Street, Honolulu aforesaid, party of the second part, hereinafter called the "trustee", which expression shall be deemed to include all successors in trust hereunder;

Whereas, heretofore and on, to wit, September 8, 1931, said surviving settlor, party of the first part herein, with his wife Mary Mapuana Peters, since deceased, as joint settlors, did execute to and with the Hawaiian Trust Company, Limited, a Hawaiian corporation, party of the second part herein, an indenture of trust of which the child of the settlors, to wit, Mapuana Peters McComas (nee Mapuana Smith Peters), was principal beneficiary, and the

Exhibit No. 1 (5)—(Continued)

said trust for the said beneficiary is still in full force and effect; and

Whereas, by said indenture of trust there was reserved to the said joint settlors and the survivor of them the right "from time to time to change, modify or amend the provisions of this trust deed but not to revoke the same or to so change it that they or either of them will receive back any of the trust estate or any income therefrom"; and

Whereas, the said Mary Mapuana Peters has since departed this life and the party of the first part herein is the survivor of the said joint settlors; and

Whereas, it is the desire and purpose of the surviving settlor to change, modify and amend certain provisions of said indenture of trust of September 8, 1931;

Now Therefore, This Indenture Witnesseth:

That the surviving settlor, in exercise of the right reserved to him in said indenture of trust of September 8, 1931, to change, modify or amend the provisions thereof, does hereby change and modify the following provisions of said indenture of trust, that is to say:

1. That he does hereby change, modify and amend paragraph 2 of the uses and trusts set forth on page 2 of said indenture by adding thereto the following paragraph:

Exhibit No. 1 (5)—(Continued)

“Should said income, together with other means of livelihood available to the said beneficiary, prove insufficient for her reasonable and proper maintenance and support, the trustee may invade the principal to the extent necessary to make up such deficiency.”

So that this paragraph as amended shall read as follows:

“2. To pay the remaining net rents, profits and income to said beneficiary for and during the term of her natural life in quarterly payments or oftener as the trustee shall deem expedient.

“Should said income, together with other means of livelihood available to the said beneficiary, prove insufficient for her reasonable and proper maintenance and support, the trustee may invade the principal to the extent necessary to make up such deficiency.”

2. That he does hereby change, modify and amend paragraph 4 of the uses and trusts set forth on page 2 of said indenture of trust by deleting therefrom the word “imperatively” in line 3 and substituting in lieu thereof the word “reasonably” so that this paragraph shall read as follows:

“4. If at any time or times on account of serious illness or other unforeseen emergency, the beneficiary shall, in the opinion of the trustee, reasonably require the expenditure upon

Exhibit No. 1 (5)—(Continued)

her or for her benefit of principal hereof, said trustee is hereby authorized to appropriate and expend for such purpose such an amount as it may deem necessary under the circumstances.”

3. That he does hereby change, modify and amend sub-subparagraph 2 of subparagraph (b) of paragraph 10 set forth on page 5 of said indenture of trust so that this sub-subparagraph shall read as follows:

“2. If the beneficiary shall leave surviving her no issue, to distribute the same to those who shall be living at her death of her brother, E. C. Peters, Jr., and her sister, Elsa Peters Steen, and of the issue of either or both of them who shall be then deceased, said issue taking per stirpes by right of representation in each generation.”

4. That he does hereby change, modify and amend sub-subparagraph 3 of subparagraph (b) of paragraph 10 set forth on page 6 of said indenture of trust so that this sub-subparagraph shall read as follows:

“3. If the beneficiary shall leave surviving her no issue nor said brother nor said sister nor issue of either of said brother or said sister, to distribute the same to such person or persons as the said beneficiary may by her last will direct, or in default of such will and direction to those who would have been the heirs at law of said beneficiary absolutely and in accordance

Exhibit No. 1 (5)—(Continued)

with the laws of descent of the Territory of Hawaii then obtaining if she had then died intestate and domiciled in the Territory of Hawaii and if she had not been survived by the Settlor or any minor child of the Settlor.”

5. That he does hereby irrevocably release and extinguish the right in the surviving settlor to shift or to effect a partial or complete alteration of the economic benefits of the trust created by said indenture of September 8, 1931, and does hereby change, modify and amend paragraph 5 set forth on page 3 of said indenture of trust by limiting the power of amendment reserved therein so that the surviving Settlor shall not hereafter have the right to shift or to effect a partial or complete alteration of the economic benefits of the trust created by said indenture of September 8, 1931.

And the trustee, in consideration of the premises, does hereby and by these presents acknowledge, agree to and confirm the changes, modifications and amendments of the said indenture of trust of September 8, 1931, and undertakes and agrees by and with the surviving settlor to execute the trusts by said indenture of trust created as hereby changed, modified and amended.

In Witness Whereof, the said surviving Settlor has hereunto set his hand and seal, and the Trustee has caused its name to be hereunto subscribed and its corporate seal affixed by its proper officers there-

Exhibit No. 1 (5)—(Continued)

unto duly authorized the day and year first above written.

(Seal) /s/ EMIL CORNELIUS PETERS
 Surviving Settlor

HAWAIIAN TRUST COM-
PANY, LIMITED, Trustee

/s/ By H. W. B. WHITE
 Its Asst. Vice-President
 and

/s/ F. W. KLEBAHN, JR.,
 Its Asst. Treasurer

Territory of Hawaii,
City and County of Honolulu—ss.

On this 31 day of December, A. D. 1943, before me personally appeared Emil Cornelius Peters, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

/s/ ETHEL E. DANFORD,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission expires November 30, 1946.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 31 day of December, A.D. 1943, before me appeared H. W. B. White and F. W. Klebahn, Jr., to me personally known, who, being by me duly sworn, did say that they are the Assistant Vice Presi-

Exhibit No. 1 (5)—(Continued)

dent and Assistant Treasurer respectively of Hawaiian Trust Company, Limited, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said H. W. B. White and F. W. Klebahn, Jr., acknowledged said instrument to be the free act and deed of said corporation as Trustee.

/s/ ETHEL E. DANFORD,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My Commission expires November 30, 1946.

EXHIBIT No. 1 (6)

AMENDMENT OF TRUST INDENTURE

This Indenture made this 1st day of January, A. D. 1944, by and between Emil Cornelius Peters, whose residence and post office address is No. 20 Dowsett Avenue, Honolulu, City and County of Honolulu, Territory of Hawaii, party of the first part, hereinafter called the "surviving settlor," and Hawaiian Trust Company, Limited, a Hawaiian corporation, whose principal place of business and post office address is No. 120 South King Street, Honolulu aforesaid, party of the second part, hereinafter called the "trustee," which expression shall be deemed to include all successors in trust hereunder;

Whereas, heretofore and on, to wit, September 8, 1931, Emil Cornelius Peters, with his wife Mary

Exhibit No. 1 (6)—(Continued)

Mapuana Peters, since deceased, as joint settlors, did execute to and with the Hawaiian Trust Company, Limited, a Hawaiian corporation, three separate indentures of trust containing substantially the same terms and provisions, of each of which the children of the said joint settlors, to wit, Mapuana Peters McComas (nee Mapuana Smith Peters), Emil Cornelius Peters, Jr., and Elsa Peters Steen (nee Elsa Hildebrandt Peters) were respectively beneficiaries, and the respective trusts for the respective beneficiaries thereby respectively created are still in full force and effect; and

Whereas, thereafter and on, to wit, May 28, 1935, the surviving settlor, party of the first part herein, with his wife Mary Mapuana Peters, since deceased, as joint settlors, did execute with the party of the second part herein as trustee a certain indenture of trust wherein there was expressly reserved unto the joint settlors and the survivor of them the right “from time to time to change, modify or amend the provisions of this trust instrument but not to revoke the same or to change it that they or either of them will receive back any of the trust estate”; and

Whereas, the said Mary Mapuana Peters has since departed this life and the party of the first part herein is the survivor of the said joint settlors; and

Whereas, the trust created by the said indenture
Now Therefore, This Indenture Witnesseth:

That the surviving settlor of the joint settlors

Exhibit No. 1 (6)—(Continued)

named in the said indenture of trust of May 28, 1935, in the exercise of the right therein reserved to him as survivor of said joint settlors from time to time to change, modify or amend the provisions of said indenture of trust of May 28, 1935, but not to revoke the same or to change it that he shall receive back any of the trust estate thereby created, and of all other rights and powers him thereunto enabling, does hereby change, modify and amend the provisions of said indenture of trust of May 28, 1935, as follows: by incorporating therein an instruction to said Hawaiian Trust Company, Limited, in its capacity as trustee under said indenture of trust of May 28, 1935, to grant, assign, transfer, set over and deliver as of this first day of January, 1944, to said Hawaiian Trust Company, Limited, in its capacity as trustee under said three indentures of trust of September 8, 1931, respectively, all of the following described property now included in the trust estate held by it as trustee under said indenture of trust of May 28, 1935, in the following shares, it being understood and agreed that all responsibility and liability of said Hawaiian Trust Company, Limited, as trustee under said indenture of trust of May 28, 1935, shall cease as to said property upon such transfer and delivery:

(a) To said Hawaiian Trust Company, Limited, trustee under said indenture of trust dated September 8, 1931 under which said Mapuana Peters McComas is the principal beneficiary, the following property to be held by it as trustee under the terms and provisions of and upon the uses and trusts ex-

Exhibit No. 1 (6)—(Continued)

pressed in said indenture of trust under which said Mapuana Peters McComas is the principal beneficiary:

Bank of Hawaii	8 shares
Bishop National Bank of Hawaii.....	50 shares
Hawaiian Agricultural Co.	8 shares
Hawaiian Pineapple Co.....	1228 shares
Pepeekeo Sugar Co.....	16 shares
Hawaiian Trust Co., Ltd.....	21 shares
Waianae Co.	8 shares

(b) To said Hawaiian Trust Company, Limited, trustee under said indenture of trust dated September 8, 1931 under which said Emil Cornelius Peters, Jr., is the principal beneficiary, the following property to be held by it as trustee under the terms and provisions of and upon the uses and trusts expressed in said indenture of trust under which said Emil Cornelius Peters, Jr., is the principal beneficiary:

Bank of Hawaii.....	8 shares
Bishop National Bank of Hawaii.....	50 shares
Hawaiian Agricultural Co.	8 shares
Hawaiian Pineapple Co.....	1228 shares
Pepeekeo Sugar Co.....	16 shares
Hawaiian Trust Co., Ltd.....	21 shares
Waianae Co.	8 shares

(c) To said Hawaiian Trust Company, Limited, trustee under said indenture of trust dated September 8, 1931 under which said Elsa Peters Steen (nee Elsa Hildebrant Peters) is the principal beneficiary, the following property to be held by it as trustee under the terms and provisions of and upon the uses and trusts expressed in said indenture of trust

Exhibit No. 1 (6)—(Continued)

under which said Elsa Peters Steen is the principal beneficiary:

Bank of Hawaii.....	8 shares
Bishop National Bank of Hawaii.....	50 shares
Hawaiian Agricultural Co.	8 shares
Hawaiian Pineapple Co.....	1228 shares
Hawaiian Trust Co., Ltd.....	21 shares
Pepeekeo Sugar Co.	16 shares
Waianae Co.	8 shares

And the party of the second part, in consideration of the premises, does hereby, by these presents, accept, agree to and confirm the amendments hereby made by the surviving settlor, party of the first part, in said indenture of trust of May 28, 1935, and agrees to obey the foregoing instructions hereby incorporated in said indenture of trust of May 28, 1935, and to grant, assign, transfer, set over and deliver the above described property as required by said instructions.

In Witness Whereof, the said surviving settlor has hereunto set his hand and seal, and the trustee has caused its name to be hereunto subscribed and its corporate seal affixed by its proper officers thereunto duly authorized the day and year first above written.

(Seal) /s/ EMIL CORNELIUS PETERS

HAWAIIAN TRUST COMPANY, LIMITED, Trustee

/s/ By H. W. B. WHITE
Asst. Vice Pres.

/s/ By F. W. KLEBAHN, JR.,
Asst. Treas.

Exhibit No. 1 (6)—(Continued)

Territory of Hawaii,

City and County of Honolulu—ss.

On this 3 day of January, A. D. 1944, before me personally appeared Emil Cornelius Peters to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

/s/ ETHEL E. DANFORD,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My Commission expires November 30, 1946.

Territory of Hawaii,

City and County of Honolulu—ss.

On this 3 day of January, A. D. 1944, before me appeared H. W. B. White and F. W. Klebahn, Jr., to me personally known, who, being by me duly sworn, did say that they are the Assistant Vice President and Assistant Treasurer respectively of Hawaiian Trust Company, Limited, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said H. W. B. White and F. W. Klebahn, Jr., acknowledged said instrument to be the free act and deed of said corporation as Trustee.

/s/ ETHEL E. DANFORD,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My Commission expires November 30, 1946.

EXHIBIT No. 1 (7)

AMENDMENT OF TRUST INDENTURE

This Indenture made this 25th day of October, A. D. 1944, by and between Emil Cornelius Peters, whose residence and post office address is No. 20 Dowsett Avenue, Honolulu, City and County of Honolulu, Territory of Hawaii, party of the first part, hereinafter called the "surviving settlor," and Hawaiian Trust Company, Limited, a Hawaiian corporation, whose principal place of business and post office address is No. 120 South King Street, Honolulu aforesaid, party of the second part, hereinafter called the "trustee", which expression shall be deemed to include all successors in trust hereunder;

Whereas, heretofore and on, to wit, September 8, 1931, Emil Cornelius Peters, with his wife Mary Mapuana Peters, since deceased, as joint settlors, did execute to and with the Hawaiian Trust Company, Limited, a Hawaiian corporation, three separate indentures of trust containing substantially the same terms and provisions, of each of which the children of the said joint settlors, to wit, Mapuana Peters McComas (nee Mapuana Smith Peters), Emil Cornelius Peters, Jr., and Elsa Peters Steen (nee Elsa Hildebrandt Peters) were respectively beneficiaries, and thereafter and on, to wit, December 31, 1943, said Emil Cornelius Peters, as the "surviving settlor" did execute to and with said Hawaiian Trust Company, Limited, as trustee, amendments of each of said three separate indentures of trust, and

Exhibit No. 1 (7)—(Continued)

the respective trusts as so amended for the respective beneficiaries thereby respectively created are still in full force and effect; and

Whereas, thereafter and on, to wit, May 28, 1935, the surviving settlor, party of the first part herein, with his wife Mary Mapuana Peters, since deceased, as joint settlors, did execute with the party of the second part herein as trustee a certain indenture of trust wherein there was expressly reserved unto the joint settlors and the survivor of them the right "from time to time to change, modify or amend the provisions of this trust instrument but not to revoke the same or to change it that they or either of them will receive back any of the trust estate," and thereafter and on, to wit, January 1, 1944, said Emil Cornelius Peters, as the "surviving settlor", did execute to and with said Hawaiian Trust Company, Limited, as trustee, amendments of said indenture of trust dated May 28, 1935; and

Whereas, the said Mary Mapuana Peters has departed this life and the party of the first part herein is the survivor of the said joint settlors; and

Whereas, the trust created by the said indenture of May 28, 1935, as amended, remains in full force and effect;

Now, Therefore, This Indenture Witnesseth:

That the surviving settlor of the joint settlors named in the said indenture of trust of May 28, 1935, in the exercise of the right therein reserved to him

Exhibit No. 1 (7)—(Continued)

as survivor of said joint settlors from time to time to change, modify or amend the provisions of said indenture of trust of May 28, 1935, but not to revoke the same or to change it that he shall receive back any of the trust estate thereby created, and of all other rights and powers him thereunto enabling, does hereby change, modify and amend the provisions of said indenture of trust of May 28, 1935, as heretofore amended, as follows: by incorporating therein an instruction to said Hawaiian Trust Company, Limited, in its capacity as trustee under said indenture of trust of May 28, 1935, as amended, to pay as of the date hereof, to said Hawaiian Trust Company, Limited, in its capacity as trustee under said three indentures of trust of September 8, 1931, as amended respectively, all of the property now included in the trust estate held by it as trustee under said indenture of trust of May 28, 1935, as amended, in equal shares as follows, all of said property being now in the form of cash and amounting to the total net sum of \$484.53, it being understood and agreed that all responsibility and liability of said Hawaiian Trust Company, Limited, as trustee under said indenture of trust of May 28, 1935, as amended, shall cease as to said property upon such payment:

(a) To said Hawaiian Trust Company, Limited, trustee under said indenture of trust dated September 8, 1931, as amended, under which said Mapuana Peters McComas is the principal beneficiary, the sum of \$161.51, to be held by it as trustee under the terms and provisions of and upon the uses and

Exhibit No. 1 (7)—(Continued)

trusts expressed in said indenture of trust, as amended, under which said Mapuana Peters McComas is the principal beneficiary;

(b) To said Hawaiian Trust Company, Limited, trustee under said indenture of trust dated September 8, 1931, as amended, under which said Emil Cornelius Peters, Jr., is the principal beneficiary, the sum of \$161.51, to be held by it as trustee under the terms and provisions of and upon the uses and trusts expressed in said indenture of trust under which said Emil Cornelius Peters, Jr., is the principal beneficiary;

(c) To said Hawaiian Trust Company, Limited, trustee under said indenture of trust dated September 8, 1931, as amended, under which said Elsa Peters Steen (nee Elsa Hildebrant Peters) is the principal beneficiary, the sum of \$161.51, to be held by it as trustee under the terms and provisions of and upon the uses and trusts expressed in said indenture of trust under which said Elsa Peters Steen is the principal beneficiary;

And the party of the second part, in consideration of the premises, does hereby, by these presents, accept, agree to and confirm the amendments hereby made by the surviving settlor, party of the first part, in said indenture of trust of May 28, 1935, as heretofore amended, and agrees to obey the foregoing instructions hereby incorporated in said indenture of trust of May 28, 1935, as heretofore

Exhibit No. 1 (7)—(Continued)

amended, and to pay the said money as required by said instructions.

In Witness Whereof, the said surviving settlor has hereunto set his hand and seal, and the trustee has caused its name to be hereunto subscribed and its corporate seal affixed by its proper officers thereunto duly authorized the day and year first above written.

(Seal) /s/ EMIL CORNELIUS PETERS

HAWAIIAN TRUST COM-
PANY, LIMITED, Trustee

/s/ By P. K. McLEAN
Vice President

/s/ By C. J. BIRNIE
Asst. Vice President

Territory of Hawaii,
City and County of Honolulu—ss.

On this 26th day of October, A. D. 1944, before me personally appeared Emil Cornelius Peters, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

/s/ ETHEL E. DANFORD,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission expires November 30, 1946.

Exhibit No. 1 (7)—(Continued)

Territory of Hawaii,

City and County of Honolulu—ss.

On this 26th day of October, A. D. 1944, before me appeared P. K. McLean and C. J. Birnie, to me personally known, who, being by me duly sworn, did say that they are the Vice President and Assistant Vice President respectively of Hawaiian Trust Company, Limited, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said P. K. McLean and C. J. Birnie acknowledged said instrument to be the free act and deed of said corporation as Trustee.

/s/ ETHEL E. DANFORD,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My Commission expires November 30, 1946.

EXHIBIT No. 1 (8)

TERMINATION OF TRUST

This Indenture made this 26th day of October, A. D. 1944, by and between Emil Cornelius Peters, whose residence and post office address is No. 20 Dowsett Avenue, Honolulu, City and County of Honolulu, Territory of Hawaii, party of the first part, hereinafter called the "surviving settlor," and Hawaiian Trust Company, Limited, a Hawaiian corporation, whose principal place of business and

Exhibit No. 1 (8)—(Continued)

post office address is No. 120 South King Street, Honolulu aforesaid, party of the second part, hereinafter called the "trustee," which expression shall be deemed to include all successors in trust hereunder;

Whereas, heretofore and on, to wit, May 28, 1935, the surviving settlor, party of the first part herein, with his wife, Mary Mapuana Peters, since deceased, as joint settlors, did execute with the party of the second part herein, as trustee, a certain indenture of trust, and thereafter and on, to wit, January 1, 1944, the said surviving settlor did execute with said trustee certain amendments of said indenture of trust and thereafter and on, to wit, October 25, 1944, the said surviving settlor did execute with said trustee certain further amendments of said indenture of trust; and

Whereas, under and in accordance with the provisions of said indenture of trust, as amended, and in compliance with instructions from said surviving settlor to said trustee contained therein said trustee has transferred, delivered and paid to the Hawaiian Trust Company, Limited, in its capacity as trustee under certain other indentures of trust, all of the property included in the trust estate held by it as trustee under said indenture of trust dated May 28, 1935, as amended, and there are no longer any assets covered by and subject to said indenture of trust dated May 28, 1935, as amended; and

Whereas, both said surviving settlor and said

Exhibit No. 1 (8)—(Continued)

trustee believe that it is advisable that said trust created by the said indenture of trust dated May 28, 1935, as amended be immediately terminated and desire so to terminate said trust,

Now, Therefore, This Indenture Witnesseth:

That the said surviving settlor, party of the first part herein, and said trustee, party of the second part herein, hereby each in consideration of the others execution hereof and in the exercise of all powers them thereunto enabling do hereby jointly terminate said trust created by said indenture of trust dated May 28, 1935, as amended, and do hereby jointly cancel the said indenture of trust, as amended, and do hereby each release the other from all rights and claims arising under or by reason of said indenture of trust, as amended.

In Witness Whereof, the said surviving settlor has hereunto set his hand and seal, and the trustee has caused its name to be hereunto subscribed and its corporate seal affixed by its proper officers thereunto duly authorized the day and year first above written.

(Seal) /s/ EMIL CORNELIUS PETERS

HAWAIIAN TRUST COM-
PANY, LIMITED, Trustee

/s/ By P. K. McLEAN
Vice President

/s/ By C. J. BIRNIE
Asst. Vice President

Exhibit No. 1 (8)—(Continued)

Territory of Hawaii,
City and County of Honolulu—ss.

On this 26th day of October, A. D. 1944, before me personally appeared Emil Cornelius Peters, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

/s/ ETHEL E. DANFORD,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission expires November 30, 1946.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 26th day of October, A. D. 1944, before me appeared P. K. McLean and C. J. Birnie to me personally known, who, being by me duly sworn, did say that they are the Vice President and Assistant Vice President respectively of Hawaiian Trust Company, Limited, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said P. K. McLean and C. J. Birnie acknowledged said instrument to be the free act and deed of said corporation as Trustee.

/s/ ETHEL E. DANFORD,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission expires November 30, 1946.

Form 709
Transferable
1942-1943
(Revised November 1943)

Use for a gift of property

RR 10

2004
UNITED STATES

GIFT TAX RETURN

CALENDAR YEAR 1942

(Form for use of Donor)

(To be filed in duplicate with the Collector of Internal Revenue for the donor's district not later than the 15th day of March following the close of the calendar year)

DONOR **EMIL**

PETERS

ADDRESS **Hewellen Trust Co., Ltd., Honolulu, T.H.**

CITIZENSHIP **United States**

RESIDENCE **Honolulu, T. H.**

Have you (the donor), during the calendar year indicated above, without an adequate and full consideration in money or money's worth, made any transfer exceeding \$3,000 in value (or regardless of value if a future interest) as follows? (Answer "Yes" or "No.")

- By the creation of a trust (**No**) or the making of additions to a trust previously created (**No**), in either case for the benefit of a person or persons other than yourself, and with respect to which you retain no power to revoke the beneficial title to the property or to change the beneficiaries or their proportionate benefits; or by exercising any such power that was retained in a previously created trust (**No**);
- By converting a beneficiary, other than yourself, to receive the income from a trust created by you and with respect to which you retained the power to revoke the beneficial title to the property or to change the beneficiaries or their proportionate benefits (**No**);
- By the purchase of a life insurance policy (**No**) or the payment of a premium on a previously issued policy (**No**), the proceeds of which are in either case payable to a beneficiary other than your estate, and with respect to which you retained by power to revoke the property or title to yourself or your estate or to change the beneficiaries or their proportionate benefits; or by reacquiring every such power that was retained in a previously issued policy (**No**);
- By exercising authority to withdraw funds from a joint bank account which were deposited by you (**No**);
- By converting this to another and yourself as joint tenants or to your wife or husband and yourself as tenants by the entirety (**No**);
- By the exercise or release of a power of appointment, except as provided in paragraph 1 and 2 of section 8 of the instructions (**No**);
- By converting community property into separate property of your estate or into a tenancy by the entirety of husband and wife (or other similar arrangement) in the event of your interest as joint tenant in the property fully or partly in fee (**No**);
- Instructions (**No**);
- By any other method, direct or indirect (**Yes**);

If the answer is "Yes" to any of the foregoing, each a transfer should be fully disclosed under schedule A.

COMPUTATION OF AMOUNT OF NET GIFTS FOR YEAR

1. Total included amount of gifts for year (item c, schedule A)	\$ 21,155.55
2. Total deductions for charitable, public, and similar gifts for year (item c, schedule B)	\$
3. Specific exemption claimed (see section 11 of instructions)	
4. Total deductions (item 2 plus item 3)	
5. Amount of net gifts for year (item 1 minus item 4)	\$ 21,155.55

COMPUTATION OF TAX (see section 15 of instructions)

1. Amount of net gifts for year (item 5, above)	\$ 21,155.55
2. Total amount of net gifts for preceding years (item c, schedule C)	\$ 13,126.37
3. Total net gifts (item 1 plus item 2)	\$ 34,281.92
4. Tax computed on item 3	\$ 2,837.51
5. Tax computed on item 2	\$ 678.70
6. Tax on net gifts for year (item 4 minus item 5)	\$ 2,198.81

AFFIDAVIT OF PERSON FILING RETURN

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and is to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Federal gift tax law and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfer or transfers disclosed herein under schedule A was made by me (the donor) during said calendar year.

Sworn to and subscribed before me this

day of

19

(Signature and title of officer administering oath)

(Address of person filing return)

AFFIDAVIT OF PERSON PREPARING RETURN

I swear (or affirm) that I prepared this return for the person named herein and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability of which I have any knowledge.

Sworn to and subscribed before me this

day of

19

(Signature and title of officer administering oath)

(Address of person preparing return)

NOTARIAL
SEAL

NOTARIAL
SEAL

11-11111

4171 5271 2111 2111 1-271-10

SCHEDULE A—Total Gifts During Year (see sections 5, 6, 7, 8, 9, 10, 12, and 16 of instructions)

ITEM No.	DESCRIPTION OF GIFT, AND DONEE'S NAME AND ADDRESS	DATE OF GIFT	VALUE AT DATE OF GIFT
	AS PER SCHEDULE		\$

(a) Total \$ 33,155.55
 (b) Less total exclusions not exceeding \$3,000 for each donee (except gifts of future interests) 12,000.00
 (c) Total included amount of gifts for year PER SCHEDULE ATTACHED \$ 21,155.55

SCHEDULE B—Deductions for Charitable, Public, and Similar Gifts During Year (see sections 10 and 13 of instructions)

ITEM No.	NAME AND ADDRESS OF DONEE, AND CHARACTER OF INSTITUTION	VALUE AT DATE OF GIFT
	None in excess of \$3,000.00	\$

(a) Total \$
 (b) Less total exclusions not exceeding \$3,000 for each donee (except gifts of future interests) \$
 (c) Total deductions for charitable, public, and similar gifts for year \$

SCHEDULE C—Returns, Amounts of Specific Exemption, and Net Gifts for Preceding Years (subsequent to June 5, 1931)

CALENDAR YEAR	COLLECTION DISTRICT IN WHICH PRIOR RETURN WAS FILED	AMOUNT OF SPECIFIC EXEMPTION	AMOUNT OF NET GIFTS
1933	Hawaii	\$ 1,459.50	\$ none
1935	Hawaii	41,736.87	none
		44,200.44	

(a) Totals for preceding years (without adjustment for reduced specific exemption) \$ 43,196.37 \$ none
 (b) Amount, if any, by which total specific exemption, line a, exceeds \$30,000 (see section 14 of instructions) 13,196.37
 (c) Total amount of net gifts for preceding years (total last column, line a, plus amount, if any, line b) \$ 13,196.37

(If more space is needed, attach additional sheets of same size)

14,200.44

UNITED STATES
GIFT TAX RETURN
CALENDAR YEAR 1945

TAXPAYER'S COPY
(Detach and retain this copy and the instructions)

(Name for use of Collector)
RECEIVED

(To be filed in duplicate with the Collector of Internal Revenue for the district in which the donor resides not later than the 15th day of March following the close of the year)

DONOR (Given name) (Middle name or initial) (Last name)
ADDRESS
CITIZENSHIP
RESIDENCE



Have you (the donor), during the calendar year indicated above, without an adequate and full consideration in money or money's worth, made any transfer exceeding \$3,000 in value (or regardless of value if a future interest) as follows? (Answer "Yes" or "No.")

- 1. By the creation of a trust (.....) or the making of additions to a trust previously created (.....) in either case for the benefit of a person or persons other than yourself, and with respect to which you retained no power to revoke the beneficial title to the property, or to change the beneficiaries or their proportionate benefits; or by relinquishing every such power that was retained in a previously created trust (.....).
- 2. By permitting a beneficiary, other than yourself, to exercise the income from a trust created by you and with respect to which you retained the power to revoke the beneficial title to the property in yourself or to change the beneficiaries or their proportionate benefits (.....).
- 3. By the purchase of a life insurance policy (.....) or the payment of a premium on a previously issued policy (.....) the proceeds of which are in either case payable to a beneficiary other than your estate, and with respect to which you retained no power to revoke the economic benefits in yourself or your estate or to change the beneficiaries or their proportionate benefits; or by relinquishing every such power that was retained in a previously issued policy (.....).
- 4. By permitting another to withdraw funds from a joint bank account which were deposited by you (.....).
- 5. By conveying title to another and yourself as joint tenants or to your wife or husband and yourself as tenants by the entirety (.....).
- 6. By the exercise or exercise of a power of appointment, except as provided in subparagraphs 1 and 2 of section 3 of the instructions (.....).
- 7. By conveying community property to another, or by conveying community property into separate property of your spouse or into a tenancy by the entirety of yourself and spouse (or other similar ownership), to the extent of your interest as prescribed by the State or State in section 3 of the instructions (.....).
- 8. By any other method, direct or indirect (.....).

If the answer is "Yes" to any of the foregoing, such a transfer should be fully disclosed under schedule A.

COMPUTATION OF AMOUNT OF NET GIFTS FOR YEAR

1. Total included amount of gifts for year (item c, schedule A)	\$	8156.76
2. Total deductions for charitable, public, and similar gifts for year (item c, schedule B)	\$	
3. Specific exemption claimed (see section 11 of instructions)		
4. Total deductions (item 2 plus item 3)		
5. Amount of net gifts for year (item 1 minus item 4)	\$	8156.76

COMPUTATION OF TAX (see section 13 of instructions)

1. Amount of net gifts for year (item 5, above)	\$	8156.76
2. Total amount of net gifts for preceding years (item c, schedule C)		
3. Total net gifts (item 1 plus item 2)		
4. Tax computed on item 3		
5. Tax computed on item 2		
6. Tax on net gifts for year (item 4 minus item 5)	\$	290.00

FIDELITY OF PERSON FILING RETURN

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Federal gift tax law and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfer or transfers disclosed herein under schedule A was made by me (the donor) during said calendar year.

NOTARIAL SEAL

Sworn to and subscribed before me this 7th day of March, 1945

Signature of donor (or executor, other person)
P. C. Box 9145 Honolulu, Hawaii

Notary Public in and for the State of Hawaii

FIDELITY OF PERSON PREPARING RETURN

I swear (or affirm) that I prepared this return for the person named herein and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability of which I have any knowledge.

NOTARIAL SEAL

Sworn to and subscribed before me this 7th day of March, 1945

Signature of person preparing return

Signature and title of officer administering oath

Address of person preparing return

SCHEDULE A—Total Gifts During Year (see sections 5, 6, 7, 8, 9, 10, 12, and 14 of instructions)

ITEM No.	DESCRIPTION OF GIFT, AND DONEE'S NAME AND ADDRESS	DATE OF GIFT	VALUE AT DATE OF GIFT
			\$

- (a) Total \$
- (b) Less total exclusions not exceeding \$3,000 for each donee (except gifts of future interests) \$
- (c) Total included amount of gifts for year \$

SCHEDULE B—Deductions for Charitable, Public, and Similar Gifts During Year (see sections 10 and 12 of instructions)

ITEM No.	NAME AND ADDRESS OF DONEE, AND CHARACTER OF INSTITUTION	VALUE AT DATE OF GIFT
		\$

- (a) Total \$
- (b) Less total exclusions not exceeding \$3,000 for each donee (except gifts of future interests) \$
- (c) Total deductions for charitable, public, and similar gifts for year \$

SCHEDULE C—Returns, Amounts of Specific Exemption, and Net Gifts for Preceding Years (subsequent to June 6, 1932)

CALENDAR YEAR	COLLECTION DISTRICT IN WHICH PRIOR RETURN WAS FILED	AMOUNT OF SPECIFIC EXEMPTION	AMOUNT OF NET GIFT
1933	Hawaii	\$ 1,459.50	\$ None
1935	Hawaii	41,735.87	None
1943	Hawaii	None	21,155.55

- (a) Totals for preceding years (without adjustment for reduced specific exemption) \$ 43,195.37 \$ 21,155.55
- (b) Amount, if any, by which total specific exemption, line a, exceeds \$30,000 (see section 14 of instructions) 13,195.37
- (c) Total amount of net gifts for preceding years (total, last column, line a, plus amount, if any, line b) \$ 34,351.92

(If more space is needed, attach additional sheets of same size)

Exhibit No. 1 (10)—(Continued)

In 1944 taxpayer relinquished certain powers and control with respect to the property and income of a "Discretionary Trust" created prior to January 1, 1939 (i.e. May 28, 1935) by taxpayer and his wife now deceased.

Said relinquishment was nontaxable in conformity with the provisions of section 1000 (3) of the Internal Revenue Code, in view of the fact that the transfer in trust under indenture of May 28, 1935 was treated as a taxable gift and gift tax returns were duly filed for the calendar year 1935.

Full details regarding the aforesaid relinquishment, together with taxpayer's written consent to treat the said transfer of May 28, 1935 as a taxable transfer for the year 1935 and for all periods thereafter, as required by section 1000 (3) of the Internal Revenue Code, are contained in taxpayer's letter, together with accompanying documents attached and made a part of this return.

EXHIBIT No. 1 (11)

Chambers of Associate Justice E. C. Peters
Supreme Court of Hawaii

[Stamped]: Received—Files Mar 12 1945—Estate
Tax. Received from Files Mar 14 1945—Gift Tax.

[In longhand]: To KBF ER Ha 14

Commissioner of Internal Revenue,
Department of the Treasury,
Washington 25, D. C.

March 7, 1945

Dear Sir:

Pursuant to your letter of Nov. 1, 1944, reference MT-ET-GT-RR, addressed to the Hawaiian Trust Company, Ltd., 120 South King St., Honolulu, Hawaii, over the signature of the Honorable D. S. Bliss, Deputy Commissioner, I am forwarding to you for the attention of the miscellaneous tax unit the consent required under section 502 of the Revenue Act of 1943, in duplicate.

I have also filed with the local collector a gift tax return for the calendar year 1944 on form 709, together with copies of the enclosed consent together with the accompanying documents attached.

Respectfully yours,

/s/ E. C. PETERS

ju—encls

Memo: EXHIBIT No. 1 (12)

Donor: Emil C. Peters

Schedule 1-a

Explanation of adjustment to Net Gifts—

Schedule A of Return

1-1-1944 Gifts	Return	Corrected
36.84 shares Hawaiian Pines at 22.....	—0—	\$81,048.00
63 shares Hawaiian Trust Co. at 1.40.....	—0—	8,820.00
150 shares Bishop Nat'l. Bnk. at 34½.....	—0—	5,175.00
24 shares Bank of Hawaii at 2.40.....	—0—	5,760.00
24 shares Hawaiian Agri. at 24.....	—0—	576.00
48 shares Peepukeo Sugar at 22.....	—0—	1,056.00
24 shares Waeanae Co. at 6.....	—0—	144.00
10-25-1944 Gifts		
Cash.....		484.53
Total.....		<u>\$103,063.53</u>
Gift of one-half interest equals.....		<u>\$ 51,531.77</u>

The adjustment with respect to the above changes is based upon Section 452 (b) and (c) (1) of the Revenue Act of 1942. Also Section 451 of the Revenue Act of 1942, Gift Tax Regulations 108, Sections 86.2 (b) and (c) and Section 86.3.

The Donor is subject to Gift Tax on one-half the value of the Corpus paid over to the three Trusts of September 8, 1931, upon January 1, 1944 and October 25, 1944, as he exercised the right reserved to him in the Trust of May 28, 1935, to change, modify and amend the provisions thereof thereby releasing a general power of appointment.

Exhibit No. 1 (12)—(Continued)

Computation of Gift Tax

	Return	Recommended
Amount of net gifts 1944.....	—0—	\$51,531.77
Amount of net gifts preceding years.....		35,355.99
		<hr/>
Total amount of net gifts.....		86,887.76
Less: exclusion		9,000.00
		<hr/>
Total net gifts		77,887.76
Less: Specific exemption		—0—
		<hr/>
Total net gifts for tax.....		77,887.76
Tax on total net gifts.....		10,881.43
Tax on net gifts for preceding years.....		2,973.06
		<hr/>
Deficiency		\$ 7,908.37

I hereby certify this is a true copy of the original schedule.

/s/ H. A. PETERSON,

5/19/50

Internal Revenue Agent in
Charge.

[Endorsed]: Filed October 5, 1950.

EXHIBIT No. 1 (13)

(T. D. 5366)

Title 26—Internal Revenue

Chapter I—Subchapter B—Part 86—Gift Tax

Regulations 108 amended to conform to
the Revenue Act of 1943

Treasury Department, Office of Commissioner of
Internal Revenue, Washington 25, D. C.

To Collectors of Internal Revenue
and Others Concerned:

In order to conform Regulations 108 [Part 86,

Exhibit No. 1 (13)—(Continued)

Title 26, Code of Federal Regulations, 1943 Sup.] to sections 502 and 505 of the Revenue Act of 1943 (Public Law 235, 78th Congress), enacted February 25, 1944, such regulations are amended as follows:

Paragraph 1. There is inserted immediately preceding section 86.1 the following:

Sec. 502. Certain Discretionary Trusts in Connection With Gift Tax. (Revenue Act of 1943, Title V, enacted February 25, 1944.)

(a) Amendment of the Internal Revenue Code—Section 1000 of the Internal Revenue Code (imposing the gift tax) is amended by inserting at the end thereof the following:

“(e) Certain Discretionary Trusts.—In the case of property in a trust created prior to January 1, 1939, if on and after January 1, 1939, no power to revest title to such property in the grantor could be exercised either by the grantor alone, or by the grantor in conjunction with any other person not having a substantial adverse interest in the disposition of such property or the income therefrom, then a relinquishment by the grantor on or after January 1, 1940, and prior to January 1, 1945, of power or control with respect to the distribution of such property or the income therefrom by an exercise or other termination of such power or control shall not be deemed a transfer of property for the purposes of this chapter. If such property was transferred in trust, the grantor not retaining such power to re-

Exhibit No. 1 (13)—(Continued)

vest title thereto in himself, or if such power to re-vest title to such property in the grantor was relinquished, while a law was in effect imposing a tax upon the transfer of property by gift, this subsection shall apply only if (1) gift tax was paid with respect to such transfer or relinquishment, and not credited or refunded, or a gift tax return was made within the time prescribed on account of such transfer or relinquishment but no gift tax was paid with respect to such transfer or relinquishment because of the deductions and exclusions claimed on such return, and (2) the grantor consents, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, for all purposes of this chapter to treat such transfer or relinquishment in the calendar year in which effected, and for all periods thereafter, as having been a transfer of property subject to tax under this chapter. This subsection shall not apply to any payment or other disposition of income occurring prior to the termination of power or control with respect to the future disposition of income from the trust property.”

* * * *

(c) Interest on Overpayments.—No interest shall be allowed or paid on any overpayment resulting from the application of this section.

Sec. 505. Extension of Time in Connection With Release of Powers of Appointment. (Revenue Act of 1943, Title V, enacted February 25, 1944.)

* * * section 452 (c) of the Revenue Act of 1942 is amended to read as follows:

Exhibit No. 1 (13)—(Continued)

“(c) Release Before January 1, 1945.—

“(1) A release of power to appoint before January 1, 1945, shall not be deemed a transfer of property by the individual possessing such power.

“(2) This subsection shall apply to all calendar years prior to 1945.”

Par. 2: Section 86.2 (b) is amended as follows:

(A) By changing the second sentence of the first paragraph to read as follows:

The release before January 1, 1945, of a power to appoint created on or before October 21, 1942, the date of enactment of the Revenue Act of 1942, is excepted from the application of the tax by reason of the express provisions of section 452 (c) of the Revenue Act of 1942, as amended by section 505 of the Revenue Act of 1943.

(B) By changing the first part of the second paragraph preceding subparagraph “(1)” to read as follows:

During the calendar year 1943 and any calendar year thereafter, section 1000 (c) as added by the Revenue Act of 1942, applies, subject, however, to section 452 (c) of such Act, as amended by section 505 of the Revenue Act of 1943. That is, during such years an exercise or release of a power of appointment (other than a release prior to January 1, 1945 of a power of appointment created on or before October 21, 1942) without an adequate and full consideration in money or money's worth (including a power to appoint exercisable in conjunction with an-

Exhibit No. 1 (13)—(Continued)

other person) constitutes a gift by the individual possessing such power, except in the case of the following:

(C) By striking out "March 1, 1944, wherever it appears in subparagraph "(3)" of the second paragraph and in the next to the last paragraph, and by inserting in lieu thereof "January 1, 1945."

Par. 3. Section 86.3 is amended by changing the last paragraph to read as follows:

Section 1000 (e), as added by section 502 of the Revenue Act of 1943, provides in the case of property transferred in trust before January 1, 1939, under which the grantor, on and after such date, retained no power to revest title to such property in himself, exercisable by the grantor alone or in conjunction with any other person not having a substantial adverse interest in the disposition of such property or the income therefrom, that the relinquishment by the grantor on or after January 1, 1940 and prior to January 1, 1945, by an exercise or other termination, of a power to change the disposition of the trust property, which completes the gift thereof, shall not be treated as a gift for the purposes of the gift tax statute. However, if the property had been transferred in trust without the grantor retaining power to revest title to the property in himself, or if such power previously retained had been relinquished, while a Federal gift tax statute was in effect, the exemption provided by section 1000 (e) shall apply only if (1) gift tax had been paid with respect to such prior transfer or relin-

Exhibit No. 1 (13)—(Continued)

quishment, and not credited or refunded, or a gift tax return had been filed within the time prescribed on account of such prior transfer or relinquishment but no gift tax paid because of deductions or exclusions claimed on such return, and (2) the grantor agrees in writing to continue to treat such prior transfer or relinquishment as completing the gift for all purposes of the gift tax statute except as hereinafter indicated with respect to income. Upon submission of such written agreement, the Commissioner may make any necessary redetermination of the amount of the net gifts for such prior year, and, unless assessment is barred by statutory limitations or rule of law, assert any resulting deficiency tax. The exemption provided by section 1000 (e) shall not apply to any payment or other disposition of income while the grantor retains the power of disposition of the future income from the trust property. For example, if a donor created a trust in 1930, reserving a power to change the beneficiaries and their proportionate interests with respect to principal and income, but without retaining the power to revest the property in himself, and terminates his reserved power in 1944, so that he is no longer able to change the beneficiaries or their respective interests, the interim payment of income to any beneficiary or other surrender by the donor of control over such income prior to such termination is nevertheless a taxable gift and to be treated accordingly. The same result follows if a similar trust was created while a gift tax law was in effect and the

Exhibit No. 1 (13)—(Continued)

donor, prior to January 1, 1945, terminates the afore-said reserved power, consenting to treat the original transfer in trust in the calendar year in which effected and for all periods thereafter as having been a transfer subject to gift tax. No interest shall be allowed or paid on any overpayment resulting from the application of the exemption provided by section 1000 (e).

(This Treasury decision is issued under the authority contained in sections 1000, 1029 and 3791 of the Internal Revenue Code (53 Stat. 144, 157, 487; 26 U.S.C. 1000, 1029, 3791), and sections 502 and 505 of the Revenue Act of 1943 (Public Law 235, 78th Congress), enacted February 25, 1944.)

GEO. J. SCHOENEMAN,

Acting Commissioner of Internal
Revenue.

Approved: May 5, 1944.

JOHN L. SULLIVAN,

Acting Secretary of the Treasury

(Filed with the Division of the Federal Register
May 6, 1944, 10:18 a.m.)

[Endorsed]: Filed Oct. 5, 1950.

[Title of District Court and Cause.]

OPINION OF THE COURT

1. Introduction.

This case presents three questions of law, two of them involving difficult if not abstruse problems relating to the taxability, as gifts, of the relinquishment of certain powers reserved by the settlors of a discretionary trust.

Specifically, the questions are as follows:

1. Is the Commissioner of Internal Revenue barred from reviewing the fair market value of corporate stock, a gift of which was made by the taxpayer in years more than three years prior to assessment, and assessing a deficiency in the current year based upon the alleged under-valuation of such stock?

2. Does the relinquishment by the taxpayer of his discretionary power or control over the distribution of the property comprising a trust settled in 1935 constitute a non-taxable transfer of property within the "amnesty" offered by the Revenue Act of 1943?

3. Does the relinquishment by the taxpayer of his discretionary power or control over the disposition of the property comprising such 1935 trust constitute, in respect of the alleged power of appointment of which the taxpayer was the donee and the wife of the taxpayer the donor, a non-taxable "release" of the power of appointment within the provisions of the Revenue Act of 1942?

2. The Facts.

On September 8, 1931, the plaintiff and his wife created three trusts, in identically the same form, *mutatis mutandis*, in each of which the Hawaiian Trust Company, Ltd., is trustee, and one of the three adult children of the settlors is the beneficiary.

On May 28, 1935, the same settlors created another trust, with the same trustee, with themselves as

beneficiaries for their joint lives and the survivor of them, remainder to such persons and in such estates as the survivor might by his or her last will appoint; and, in default of such appointment, to the trustee of the trusts of 1931, for the beneficiaries of the latter trusts, in equal shares.

Shares of stock constituted the corpus of each trust. The stock conveyed in trust by the 1935 indenture was in the name of the plaintiff and his wife "as joint tenants with right of survivorship and not as tenants in common".

Each of the four trusts reserved to the settlors and the survivor of them the right "from time to time to change, modify or amend the provisions of this trust deed but not to revoke the same or to so change it that they or either of them will receive back any of the trust estate".

The wife of the taxpayer died on January 8, 1942.

On December 31, 1943, the plaintiff taxpayer, as the surviving settlor of the 1931 trusts, amended those indentures in several particulars, one of them being the irrevocable release and extinguishment by him of the right of the surviving settlor "to shift or to effect a partial or complete alteration of the economic benefits" of the 1931 trusts, thus modifying the original provisions reserving to the settlors the right of amendment within certain limits, as stated above.

On January 1, 1944, and on October 25, 1944, the plaintiff, as the surviving settlor of the 1935 trust,

amended that indenture by incorporating therein directions to the trustee to transfer to itself as trustee under the three indentures of 1931, certain personal property, including cash, included in the trust estate of 1935. Thus there was distributed to the Hawaiian Trust Company, Ltd., as trustee under the 1931 trusts, the remaining trust principal subject to the 1935 trust and all unapplied income therefrom, thereby conveying to the ultimate takers in default and anticipating what would have occurred under the provisions of the 1935 trust, *supra*, had the surviving settlor failed to exercise the power of appointment by will.

On October 26, 1944, the indenture of May 28, 1935, was canceled by the mutual consent of the plaintiff and the trustee.

In compliance with the provisions of Section 507 of the Revenue Act of 1932, as amended, the plaintiff and his wife made separate returns of the transfers by gift made by them in the calendar year of 1935 by the creation of the 1935 trust. The plaintiff asserts that "they assumed upon administrative practice Gift Tax Regulation 79, Art. 3, * * * and E.T. 6, C.B. XIV-1, 1935, p. 381, * * *, that the gifts affected (sic) by the indenture of trust of May 28, 1935, were complete." The plaintiff returned the sum of \$41,736.87 as the amount of gifts for the year "other than charitable, etc.", and his wife reported the sum of \$27,370.35. Both claimed their respective amounts as specific exemptions, and therefore paid no tax thereon.

In computing his tax liability for 1943, the plaintiff employed the net gifts reported by him for 1935 as a part of the aggregate sum of net gifts made by him since June 6, 1932, the date on which the Revenue Act of 1932 was passed. In that aggregate sum was included gifts made by the taxpayer in 1933. On September 8, 1931, the date of the creation of the first trusts involved in this case, gifts were not subject to Federal tax. The plaintiff paid a tax according to the above method of computation.

The Commissioner, on the other hand, in assessing the plaintiff's tax liability for 1943, declined to accept the valuation of the stock of the Pineapple Holding Company, Ltd., placed by the plaintiff, and as reported by him in his 1935 return. The Commissioner determined that the fair market value of the stock at the time of the gift—May 28, 1935—was \$17.125 a share, increased the amount of net gifts of previous years by the amount of the alleged undervaluation, and found a deficiency in the tax liability of the plaintiff for the year 1943. On October 10, 1947, the plaintiff paid the alleged deficiency, amounting to \$52.71, with interest amounting to \$10.89.

For the calendar year of 1944, the plaintiff, pursuant to the provisions of Section 1006 of the Internal Revenue Code, made a return of all transfers by gift made by him during that year. He reported the amendments of the trust indenture of May 28, 1935, effected January 1, 1944, and October 25, 1944, and the cancellation of the trust by the indenture of

October 26, 1944, as a relinquishment by him of power or control with respect to the distribution of the property subject to that trust, as well as the income therefrom. He reported those amendments and that cancellation as the exercise and termination of such power and control, reserved to the settlors and the survivor of them by the provisions of the 1935 trust, as non-taxable for gift-tax purposes. The plaintiff also, on March 7, 1945, prepared in writing and filed with the Commissioner his consent to treat such relinquishment in the calendar year in which effected and for all periods thereafter as having been a transfer of property subject to tax under the provisions of the gift-tax law.

On September 17, 1947, the Commissioner determined a deficiency in the plaintiff's gift taxes for the calendar year of 1944, in the sum of \$7,908.37. The theory of the Commissioner's action was that the plaintiff was the grantor of the trust property within the meaning of Section 1000 (e) of the Internal Revenue Code, *infra*, only to the extent of the one-half of the corpus of the trust attributable to the property transferred to it by the taxpayer, and that therefore the release was non-taxable only to the extent of one-half of the value of the trust property; and that the one-half attributable to the property transferred to the trust by his wife was consequently taxable under Section 1000 (e) of the Internal Revenue Code, *infra*.

The deficiency, in the sum of \$7,908.37, with interest of \$1,259.59, was paid by the plaintiff on November 10, 1947.

The plaintiff seeks judgment for \$63.60 on the first cause of action, based upon the payment of the 1943 deficiency, and for \$9,167.96 on the second cause of action, based upon the payment of the 1944 deficiency.

3. As to the First Cause of Action: The Commissioner Is Not Barred by the Statute of Limitations From Reviewing the Fair Market Value of Corporate Stock.

No evidence whatever was submitted as to the fair market value of the 5,355 shares of stock of the Pineapple Holding Company, Ltd., which forms the major part of the 1935 trust corpus. The plaintiff contends that under the provisions of Section 1016 (a) of the Internal Revenue Code, which require that the assessment of a gift tax shall be made, or its collection begun, within three years after the return is filed, the Commissioner was barred in 1947 from reviewing the fair market value of the corporate stock in question. The plaintiff asserts that the fair market value of the stock in 1935 is purely a question of fact and that there is an important distinction between questions of law and questions of fact in determining the "true and correct aggregate" of net gifts of previous years, as recognized in *Wintorbotham vs. Commissioner*, U.S. B.T. Apps. 972, 978.

The plaintiff contends that it could not have been the intention of the Supreme Court in *Commissioner vs. Disston* 325 U.S. 442, to construe the statute so that the question of the fair market value of a gift

could hang undetermined over the head of a taxpayer during the remainder of his life should he desire to make an additional gift prior to his death.

There is merit to much of plaintiff's argument on this question, but the words of the *Disston* case compel a decision against plaintiff.

A part of the *Commissioner v. Disston* case, at p. 449, is quoted, following:

"The question remains whether the adjustment of net gifts for 1936 in computing 1937 and 1938 tax liability is barred by the statute of limitations. As has been noted, Section 502 requires utilization of 'the aggregate sum of the net gifts for each of the preceding calendar years' in the formula for computing gift tax liability. Section 517 (a) does not purport to bar adjustment of the net gift figure for that purpose, but simply prevents assessments and collection of a tax for a year barred by the statute. The statute does not purport to preclude an examination into events of prior years for the purpose of correctly determining gift tax liability for years which are still open. The Tax Court and Treasury Regulations have construed Section 517 (a) as requiring determination of the true and correct aggregate of net gifts for previous years. The construction is in accord with the statutory language."

The relevant language of Section 502 of the Revenue Act of 1932, to which the Supreme Court refers in the foregoing excerpt, has been carried over verbatim into Section 1001 (a) (1) of the Internal Rev-

enue Code. Section 517 (a) of the Revenue Act of 1932 is the same as Section 1016 (a), *supra*, of the Internal Revenue Code.

4. The Relinquishment by the Taxpayer of His Discretionary Control Over the Distribution of the Property Comprising the 1935 Trust Was Non-taxable Only to the Extent of His Own Moiety Interest in Such Property.

The second cause of action, however, presents greater difficulty. It involves the abstract and somewhat elusive problem of whether the relinquishment by the taxpayer of his discretionary power or control over the distribution of property comprising the 1935 trust, constitutes a non-taxable transfer of property or, in any event, a non-taxable "release" of a power of appointment.

According to the plaintiff's theory of the second cause of action, two "questions emerge and are posed for the decision of the court." The propositions to which the plaintiff refers constitute the last two points listed in the Introduction to this memorandum. They will be dealt with *seriatim* herein.

(a) The Corpus of the 1935 Trust Was Not Held in Entirety.

It will be remembered that in 1944, the plaintiff, as the surviving settlor of the 1935 trust, amended that indenture by incorporating therein directions to the trustee to transfer to itself as trustee under the three indentures of trust of 1931, all the property, including cash, comprising the 1935 trust estate.

It will also be remembered that, December 31, 1943, the taxpayer had amended the 1931 trusts so as to release and extinguish irrevocably the right of the surviving settlor to shift or effect a partial or complete alteration of the economic benefits of the 1931 trusts. It follows, therefore, that in the transfer of the corpus of the 1935 trust to the trustee of the 1931 trusts, to be held by it under the terms of the latter trusts, the relinquishment of December 31, 1943, automatically applied also to the property that had formerly constituted the estate of the 1935 trust.

The plaintiff takes the position that the amendments of the trust indenture of 1935, effected by him in 1944, "constituted a relinquishment by him as one of the grantors in the indenture of May 28, 1935, of power or control with respect to the distribution of the property in the trust created prior to January 1, 1939, and the income therefrom, by an exercise and termination of such power or control within the exceptions of Sections 502 (a) and 502 (b) of the Revenue Act of 1943 (Internal Revenue Code, Section 1000 (e) and Section 501 (c) of the Revenue Act of 1932)". He further contends "that the deficiency assessed was erroneous upon the grounds: (a) That the settlors immediately prior to the creation of the 1935 trust were owners by the entirety of the property conveyed in trust; (b) that by the terms of the trust there was reserved to the survivor of the settlors as beneficiaries in equity, the same rights of survivorship in the trust res that he and she had theretofore enjoyed at law as tenants by the entirety, except for the inhibition against

revesting; (c) that the exercise by the taxpayer of the power or control over the distribution of the remaining trust res was effected by him as a principal and not as a principal of a moiety and an appointee of a moiety; and (d) that at the time of such exercise by him of the power or control over the distribution of the remaining trust res he was a 'grantor' within the meaning of that term as employed in Sections 502 (a) and 502 (b) of the Revenue Act of 1943." (Emphasis supplied).

The defendant, on the other hand, maintains that:

"As the taxpayer was the donor of only one-half of the property in the trust, Section 1000 (e) of the Internal Revenue Code * * * applies only to the one-half that he gave and not to the one-half that was given by his wife.

"Since the trust was not within any of the exceptions enumerated in Section 1000 (c) of the Internal Revenue Code * * *, the one-half of the corpus attributable to the wife's contribution was properly taxed." (Emphasis supplied.)

As to this phase of the case, therefore, both parties rely upon Section 1000 (e). In addition, they both make passing reference to Section 1000 (c), which, however, has greater relevancy to the topic dealt with in the next succeeding subdivision of this memorandum. The text of those two subsections follows:

“Section 1000. Imposition of tax.

“(c) Powers of appointment. An exercise or release of a power of appointment shall be deemed a transfer of property by the individual possessing such power. For the purposes of this subsection the term ‘power of appointment’ means any power to appoint exercisable by an individual either alone or in conjunction with any person, except—

“(1) a power to appoint within a class which does not include any others than the spouse of such individual, spouse of the creator of the power, descendants of such individual or his spouse, descendants (other than such individual) of the creator of the power or his spouse, spouses of such descendants, donees described in section 1004 (a) (2) and donees described in section 1004 (b). As used in this paragraph, the term ‘descendant’ includes adopted and illegitimate descendants, and the term ‘spouse’ includes former spouse; and

“(2) a power to appoint within a restricted class if such individual did not receive any beneficial interest, vested or contingent, in the property from the creator of the power or thereafter acquire any such interest, and if the power is not exercisable to any extent for the benefit of such individual, his estate, his creditors, or the creditors of his estate. If a power to appoint is exercised by creating another power to appoint, such first power shall not be considered except under paragraph (1) or (2) from the definition of power of appointment to the extent of the value of the property subject to such

second power to appoint. For the purposes of the preceding sentence the value of the property subject to such second power to appoint shall be its value unreduced by any precedent or subsequent interest not subject to such power to appoint.

* * * * *

“(e) Certain discretionary trusts. In the case of property in a trust created prior to January 1, 1939, if on and after January 1, 1939, no power to revest title to such property in the grantor could be exercised either by the grantor alone, or by the grantor in conjunction with any other person not having a substantial adverse interest in the disposition of such property or the income therefrom, then a relinquishment by the grantor on or after January 1, 1940, and on or before December 31, 1947 (or on a later date in any case where it is shown to the satisfaction of the Commissioner, in accordance with regulations prescribed by him with the approval of the Secretary, that failure to relinquish prior to such later date was for reasonable cause) of power or control with respect to the distribution of such property or the income therefrom by an exercise or other termination of such power or control shall not be deemed a transfer of property for the purposes of this chapter. If such property was transferred in trust, the grantor not retaining such power to revest title thereto in himself, or if such power to revest title to such property in the grantor was relinquished, while a law was in effect imposing a tax upon the transfer of property by gift, this subsection shall apply only if (1) gift tax was paid with

respect to such transfer or relinquishment, and not credited or refunded, or a gift tax return was made within the time prescribed on account of such transfer or relinquishment but no gift tax was paid with respect to such transfer or relinquishment because of the deductions and exclusions claimed on such return, and (2) the grantor consents, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, for all purposes of this chapter to treat such transfer or relinquishment in the calendar year in which effected, and for all periods thereafter, as having been a transfer of property subject to tax under this chapter. This subsection shall not apply to any payment or other disposition of income occurring prior to the termination of power or control with respect to the future disposition of income from the trust property.”

The plaintiff contends that at the time of his exercise of the reserved power or control with respect to the distribution of the trust property, he was a “grantor”, within the meaning of Section 1000 (e). He further asserts that he and his wife were “tenants by the entirety” of the trust property, and that they reserved to themselves, as beneficiaries of equitable estates, the same power or control with respect to the distribution of the property as had been previously possessed by them at law as tenants by the entirety, except for the inhibition against revesting. As tenants by the entirety, he maintains, each of the settlors was possessed in his and her own right of the whole; “the entirety”. Ergo, runs the argu-

ment, the plaintiff, in exercising the reserved power in question, acted by virtue of the power reserved to him as a principal, and not by virtue of any power delegated to him by his wife.

The defendant complains that the plaintiff has cited no case which holds that there can be, under the law of Hawaii, a tenancy by the entirety of personal property. At the outset, however, and for the purposes of this case, we may assume to be correct the plaintiff's assertion, in his reply brief, that "At common law by analogy to realty an estate by the entirety could be created in personalty". In addition to the many decisions cited by plaintiff, there is considerable additional authority to the same effect. See the copious collection of cases in 8 A.L.R. 1017-1022.

Our specific task, however, is to ascertain whether, under the law of Hawaii and under the facts of this case, the plaintiff was a "grantor" within the purview of Section 1000 (e).

As the plaintiff points out, the word "grantor" is not defined in the statute, and therefore should be given its "natural, ordinary and familiar meaning, except as limited or restricted by the context." *Rice vs. Railroad Company*, 66 U.S. 358, 378; *DeGanay vs. Lederer*, 250 U.S. 376, 381.

In *Buhl vs. Kavanagh*, 6 Cir., 118 F. 2d 315, 320, "the decisive question" was, as here, "whether appellant was the grantor of the present trust". The Court said:

"The word 'grantor' is not defined in the statutes, and therefore is to be given its natural, ordinary and familiar meaning. (Case cited.) Putting the word

in its ordinary setting, it means the person who establishes the trust or its donor, creator or founder.”

See also *Rollins vs. Helvering*, 8 Cir., 92 F. 2d 390, 392-393, certiorari denied, 302 U.S. 763; *MacManus vs. Commissioner of Internal Revenue*, 6 Cir., 131 F. 2d 670, 673.

Applying the foregoing principles to the facts at bar, we find that there were two grantors of the 1935 trust; namely, the plaintiff and his wife. The fact that she died before the relinquishments of 1944 took place does not militate against her being the grantor of one-half of the trust created in 1935. Subsequent events could not change her status as to that fact. Her status as joint grantor of the trust was frozen on May 28, 1935. Had she died on the following day, she still would have been the grantor of her moiety.

Nor is the legal situation altered by the fact that, in the plaintiff's own language, “by the terms of the trust there was reserved to the survivor of the settlers as beneficiaries in equity, the same rights of survivorship in the trust res that he and she had theretofore enjoyed at law as tenants by the entirety,” etc. We are here concerned not with ownership, but with grant. Though, according to the stipulation of facts, the plaintiff, as “joint tenant” of the stock in question, “with right of survivorship”, at his wife's death became the sole owner of the settlers' equitable estate in the 1935 trust, the stubborn fact remains that, from 1935 to the present day, he has been the grantor of only one-half of that trust.

The plaintiff seeks to avoid the effect of this logic

by contending that "a conveyance to husband and wife in joint tenancy would create an estate by the entirety". To support this contention, the plaintiff invokes the principles of the common law, which he assert have been adopted in Hawaii in this respect.

It therefore now becomes necessary to inquire whether, in the contemplation of Hawaiian law, the plaintiff's "tenancy" of the stock was by the entirety.

I. In Hawaii, the Terms of the Grant Determine the Question of Joint Tenancy Vel Non.

As we have seen, it has been stipulated in this case that the stock conveyed by the trust indenture of May 28, 1935, was, until transferred to the name of the trustee, in the name of the plaintiff and his wife "as joint tenants with right of survivorship and not as tenants in common". In Hawaii, such a stipulation is conclusive.

Section 3190 of the Revised Laws of Hawaii of 1925 was as follows:

"Conveyances to two or more. All grants, conveyances and devises of land, or of any interest therein, made to two or more persons, shall be construed to create estates in common and not in joint-tenancy or by entirety, unless it shall manifestly appear from the tenor of the instrument that it was intended to create an estate in joint-tenancy or by entirety, provided, however, that the foregoing provisions shall not apply to grants, conveyances or devises to executors or trustees."

This provision was carried over into the 1935 compilation as Section 5180, and into the 1945 code as Section 12780.

It should be observed in passing, that the proviso in the section does not apply to the instant case, since we are not here concerned with the title of the trustee but of the trustors.

The Hawaii rule accords with general law. See 161 A.L.R. 464-465.

II. The Common Law Doctrine of the Unity of Husband and Wife No Longer Prevails in Hawaii.

In his reply brief, the plaintiff says:

“The tenancy by the entirety is founded on the common-law doctrine of the unity of husband and wife as constituting in law but one person; and that is basis for the adoption of the principles of the tenancy in Hawaii.”

In the opinion of this Court, the learned plaintiff has here fallen into grave error, so far as the law of Hawaii is concerned.

In *First National Bank of Hawaii vs. Gaines*, 16 Haw. 731, 732-733, the Court said:

“The statutory capacity of a married woman to take, hold and receive property to her separate use is inconsistent with the common law fiction of the unity of husband and wife as well as with the former statute giving the husband by virtue of marriage his wife’s personal property. The relations between husband and wife unless as affected by the statute of 1892 on the subject of the common law are statu-

tory in the law of Hawaii. 'As the laws have destroyed this unity the incidents or consequences of the unity ought not to operate.''' (Emphasis supplied.)

Indeed, even with regard to other jurisdictions, where the archaic concept of the oneness of husband and wife does survive, the Supreme Court of the United States has frowned upon the application of the ancient doctrine to tax problems.

In *Tyler vs. United States*, 281 U.S. 497, 503, the Court said:

“According to the amiable fiction of the common law, adhered to in Pennsylvania and Maryland, husband and wife are but one person, and the point made is, that by the death of one party to this unit no interest in property held by them as tenants by the entirety passes to the other. This view, when applied to a taxing act, seems quite unsubstantial. The power of taxation is a fundamental and imperious necessity of all government, not to be restricted by mere legal fictions.” (Emphasis supplied.)

III. Hawaiian Statutes Have Sedulously Recognized the Separateness of a Tenancy by the Entirety from a Joint Tenancy.

The language of Section 3190 of the Revised Laws of 1925, *supra*, and that of its successors, clearly shows that the various legislatures of Hawaii have carefully observed the distinction between tenancy of the entirety and joint tenancy. There is certainly

no suggestion that, as the plaintiff contends in his reply brief, "a conveyance to husband and wife in joint tenancy would create an estate by the entirety."

The matter, however, is put beyond cavil by Act 11 of the Session Laws of Hawaii of the Special Session of 1933. The closing sentences of this statute, which dealt with the inheritance tax, are significant:

"As hereafter modified this paragraph shall apply to tenancies by the entirety as well as to joint tenancies. Provided, however, that where such property is held in the joint names of a husband and wife, whether as joint tenants or as tenants by the entirety, only an undivided one-half of the property shall be deemed transferred and taxable under the provisions of this chapter." (Emphasis supplied.)

The foregoing provisions were carried over almost verbatim into Section 2060 of the Revised Laws of 1935 and into Section 5553 of the Revised Laws of 1945.

The expression "whether as joint tenants or as tenants by the entirety", as used in the cited statute, would be meaningless if, as the plaintiff contends, a conveyance to husband and wife in one tenancy would create an estate in the other.

As we read the Hawaiian statutes, all three tenancies are recognized in this territory. If the grant is silent or ambiguous as to the type of tenancy, an estate in common shall be presumed. If a joint ten-

ancy is specified, an estate in joint tenancy is created. If a tenancy by the entirety is spelled out, the terms of such a grant, too, will be respected. Nowhere in the Hawaiian statutes or in Hawaiian jurisprudence is there any suggestion that the terms "joint tenancy" and "tenancy by the entirety", where husband and wife are concerned, are interchangeable.

The cases cited by the plaintiff in support of his contention were either the expressions of courts sitting in other jurisdictions, or were handed down in Hawaii long before the decision in the Gaines case, *supra*, and long before the enactment of the statutes to which we have just referred. The authorities relied upon by the plaintiff do not reflect the present state of the Hawaiian law.

Accordingly, this Court holds that the plaintiff was the grantor of only one-half of the stock, within the meaning of that term as it is employed in Section 502 (a) and (b) of the Revenue Act of 1943, (Section 1000 (e) of the Internal Revenue Code).

(b) The Plaintiff Is Estopped from Claiming That He Is the Grantor of the Entire Trust.

The plaintiff concedes that "The taxpayer and his wife pursuant to and in compliance with the provisions of Section 507 of the Revenue Act of 1932, as amended, made separate returns of the transfers by gift made by them in the calendar year 1935 by the creation of the 1935 trust". He also concedes that he and his wife each claimed the full amount of their respective gift totals as specific ex-

emptions, with the result no tax liability was incurred. Had the taxpayer reported himself as being the sole grantor of the trust, he would have had to pay a gift tax, since the maximum "specific exemption" of \$50,000, "less (the) total amount of specific exemption claimed for preceding years", would not have then absorbed the entire amount of his gifts for 1935.

The plaintiff does not deny these facts, but asserts that "There is nothing inconsistent in construing one's legal position under certain statutes or regulations one way, and construing it under other statutes another way". He adds that "there is no showing that the Bureau took any position to its prejudice by reason of the separate returns made and the separate claims of full exemption".

This Court cannot agree with the plaintiff's reasoning. If the plaintiff was the grantor of the entire trust in 1944, he was so in 1935. It can hardly be said that the Commissioner's position was not prejudiced by the fact that the plaintiff and his wife filed separate gift tax returns in 1935, as a result of which neither paid any gift tax whatsoever, whereas the plaintiff would have been liable for a tax had he held himself as the sole grantor of the trust.

In *Stearns Co. vs. United States*, 291 U.S. 54, 61-62, Mr. Justice Cardozo said:

"The applicable principle is fundamental and unquestioned. 'He who prevents a thing from being done may not avail himself of the non-performance which he has himself occasioned, for the law says

you are not damnified' ". (Cases cited.) Sometimes the resulting disability has been characterized as an estoppel, sometimes as a waiver. The label counts for little."

5. The Plaintiff Effected a Non-Taxable Relinquishment of His Control Over His Deceased Wife's Moiety Interest in the Trust Property, By Virtue of Section 452 (c) of the Revenue Act of 1942.

We advert, finally to Point II urged in support of the plaintiff's second cause of action. This point is fully stated as "Question 3" in the Introduction to this memorandum opinion.

Point II is based upon the following subsection of Section 452 of the Revenue Act of 1942:

"(c) Release on or before January 1, 1943.

"(1) A release of a power to appoint before January 1, 1943, shall not be deemed a transfer of property by the individual possessing such power.

"(2) This subsection shall apply to all calendar years prior to 1943."

The defendant concedes that the period has been enlarged by subsequent amendments to January 1, 1951.

The defendant contends, however, that the plaintiff "never" released his power to alter, modify or change the 1935 trust. On the contrary, it is argued, the plaintiff exercised that power by transferring the assets of that trust to the three 1931 trusts. As

to the plaintiff's one-half interest in the property, the Commissioner concedes that such an "exercise" was "the equivalent of a relinquishment of the power", and therefore non-taxable. Section 1000 (e), *supra*, refers, it will be remembered, to the grantor's "exercise or other termination" of such power. That subsection applies only to a grantor. Only when an "exercise" of power is effected by a grantor can it be equivalent to a "relinquishment".

But, the defendant insists—and, as we have seen, correctly—the plaintiff is the grantor of only one-half of the trust. Therefore, it is argued, as to his deceased wife's moiety, the plaintiff's transfer of the 1935 trust corpus to the 1931 trusts did not amount to a "relinquishment", but was an "exercise" of the power and therefore, of course, taxable; for the amnesty of Section 452 (c) applies only to releases, and not to exercises.

The difficulty with the defendant's argument, however, is that it overlooks the fact that Section 452 (c) is not limited in its amnesty to grantors only, as is Section 1000 (e). It applies to any "individual possessing such power (to appoint)." Now, there is no question that, as original owner of one moiety interest, and as surviving owner of the other moiety interest in the trust estate, it is clear that the plaintiff possessed the power. Otherwise, the defendant's entire argument that the plaintiff "exercised" instead of "relinquishing" the power would be meaningless. If the plaintiff "exercised" the power, such "exercise" is taxable as to his wife's moiety, since the amnesty of Section 452 (c) *supra*, applies only

to "release"; i.e., relinquishment, and since that section, unlike 1000 (e), does not make "exercise" equivalent to "relinquishment".

We therefore advance to the fundamental question under Point II; i.e., whether the transfer of the 1935 trust assets to the 1931 trusts was in fact a relinquishment of the plaintiff's power "to change, modify or amend" the provisions of the 1935 trust instrument.

Elsewhere in this memorandum opinion, this Court has already indicated that, when in 1944, the plaintiff transferred the corpus of the 1935 trust to the trustee of the 1931 trusts, to be held by it under the terms of the latter trusts, he automatically subjected the 1935 trust property to the restrictions theretofore placed upon the 1931 trusts by the document of December 31, 1943. Among those restrictions was the irrevocable release and extinguishment of "the right in the surviving settlor to shift or to effect a partial or complete alteration of the economic benefits", etc.

Little need be here added to this statement. The plaintiff, of course, could have formally relinquished his right to amend the 1935 trust in one instrument, and then, immediately thereafter, in another instrument, he could have transferred the assets of the 1935 trust into the 1931 trusts. But the law—including the tax law—does not require a man to do a vain and useless thing. By transferring the 1935 trust into the 1931 immutable trusts, the plaintiff made the 1935 trust likewise immutable. In such

matters, "we must regard matters of substance and not mere form". *Weiss vs. Stearn*, 265 U.S. 242, 254; *United States vs. Phellis*, 257 U.S. 156, 168; *Ingle Coal Corporation vs. Commissioner*, 7 Cir., 174 F. 2d 569, 571.

6. Conclusion.

The plaintiff is concededly exempt from a gift tax on the transfers, in 1944, of the 1935 trust-corpus into the 1931 trusts, so far as his moiety interest in the former is concerned. And since, as we have just seen, his relinquishment of the power to amend, in so far as his deceased wife's interest in the 1935 trust property is involved, comes under the "amnesty" of Section 452 (c), *supra*, he is not taxable on the 1944 transfers at all. He must therefore prevail in his second cause of action.

Accordingly, judgment should be entered for the defendant and against the plaintiff on the first cause of action, and in favor of the plaintiff and against the defendant on the second cause of action.

Dated at Honolulu, Hawaii, this 23rd day of February, 1951.

/s/ DELBERT E. METZGER,
Judge.

[Endorsed] Filed February 23, 1951.

In the United States District Court
for the District of Hawaii

Civil No. 935

EMIL C. PETERS,

Plaintiff,

vs.

JAMES M. ALSUP, Individually, and as United
States Collector of Internal Revenue for the
District of Hawaii,

Defendant.

JUDGMENT

This cause came on to be heard October 5, 1950, upon the pleadings and stipulation of facts of the parties and was submitted to the court without a jury upon briefs.

This cause is a consolidation of two separate causes of action at law for the restitution of the overpayment of United States gift taxes illegally exacted and statutory interest thereon from date of payment to wit: the first, for the restitution of the United States gift tax illegally exacted for the calendar year 1943 in the sum of Fifty-two Dollars and Seventy-one Cents (\$52.71) with interest in the sum of Ten Dollars and Eighty-nine Cents (\$10.89), the aggregate of which or the sum of Sixty-three Dollars and Sixty Cents (\$63.60) was paid October 10, 1947; the second, for the restitution of United States gift tax illegally exacted for the calendar year 1944 in the sum of Seven Thousand Nine Hundred and Eight Dollars and Thirty-seven Cents (\$7,908.37) with interest in the sum of One Thousand Two

Hundred and Fifty-nine Dollars and Fifty-nine Cents (\$1,259.59), the aggregate of which or the sum of Nine Thousand One Hundred and Sixty-seven Dollars and Ninety-six Cents (\$9,167.96) was paid November 10, 1947.

The opinion of the court upon the merits was filed February 23, 1951.

Pursuant to the opinion of the court:

It Is Hereby Ordered and adjudged that plaintiff take nothing by his first cause of action and it be and the same is hereby dismissed; that upon his second cause of action plaintiff have and recover of the defendant individually and as United States Collector of Internal Revenue for the District of Hawaii the full amount prayed, to wit, the sum of Nine Thousand One Hundred and Sixty-seven Dollars and Ninety-six Cents (\$9,167.96) with interest at six per cent (6%) per annum upon said principal sum of \$9,167.96 from November 10, 1947, and his costs of the within action heretofore taxed in the sum of Two Hundred Thirty-nine Dollars and Eighteen Cents (\$239.18).

Dated: March 19, 1951.

By the Court

/s/ WM. F. THOMPSON, JR.,
Clerk.

The within judgment may be entered.

Dated: March 19, 1951.

/s/ D. E. METZGER,
Judge, United States District Court for the District
of Hawaii, presiding.

[Endorsed]: Filed March 19, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Please take notice that James M. Alsup, the defendant above-named, hereby appeals to the United States Court of Appeals for the Ninth Judicial Circuit from so much of the final judgment entered herein on the 19th day of March, 1951, as is adverse to the said defendant and in favor of the plaintiff above-named.

/s/ HOWARD K. HODDICK,
United States Attorney.

[Endorsed]: Filed May 4, 1951.

[Title of District Court and Cause.]

STIPULATION AS TO RECORD

It Is Hereby Stipulated between the parties hereto that the following documents and records shall be included in the record on appeal:

1. Complaint filed September 7, 1949.
2. Answer filed January 13, 1950.
3. Stipulation of Facts (and exhibits attached) filed October 5, 1950.
4. Clerk's Minutes of October 5, 1950, in the above-entitled cause.

5. Opinion of the Court filed February 23, 1951.
6. Judgment filed March 19, 1951.
7. Certificate of Probable Cause filed March 19, 1951.
8. Notice of Appeal filed May 4, 1951.
9. Letter of Clerk to Plaintiff dated May 4, 1951.
10. Statement by Appellant of Points to be relied upon on appeal.
11. Stipulation as to Record.

Dated: Honolulu, T. H., this 21st day of May, 1951.

/s/ E. C. PETERS,
Plaintiff in Person.

HOWARD K. HODDICK,
Acting United States Attorney,
District of Hawaii,
Attorney for Defendant,

/s/ By WINSTON C. INGMAN,
Assistant United States Attorney
District of Hawaii

[Endorsed]: Filed May 21, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, consists of the following listed original pleadings of record in said cause:

Complaint.

Answer.

Stipulation of Facts.

Opinion of the Court.

Judgment.

Certificate of Probable Cause.

Notice of Appeal.

Stipulation as to Record.

I further certify that included in said record on appeal is a copy of the Minutes of Court of October 5, 1950, and a copy of the letter of May 4, 1951.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 31st day of May, 1951.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, U. S. District Court,
District of Hawaii.

[Endorsed]: No. 12972. United States Court of Appeals for the Ninth Circuit. James M. Alsup, Individually, and as United States Collector of Internal Revenue for the District of Hawaii, Appellant, vs. Emil C. Peters, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed: June 11, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 12972

EMIL C. PETERS,

Plaintiff-Appellee,

vs.

JAMES M. ALSUP, Individually, and as United
States Collector of Internal Revenue for the
District of Hawaii,

Defendant-Appellant.

STATEMENT BY DEFENDANT-APPELLANT
OF POINTS TO BE RELIED UPON
ON APPEAL

Comes now James M. Alsup, defendant-appellant above named, by Howard K. Hoddick, Acting United States Attorney for the District of Hawaii, and pursuant to the provisions of Rule 19(6) of the Rules of Practice of the United States Court of Appeals

for the Ninth Circuit, hereby states that the defendant-appellant in taking this appeal relies upon the following points:

1. The entry of judgment for the plaintiff and against the defendant on plaintiff's second cause of action was in error in the following respect:

(a) The court erred in holding that the plaintiff effected a non-taxable relinquishment of his control over his deceased wife's moiety interest in the trust property by virtue of Section 452(c) of the Revenue Act of 1942.

Dated at Honolulu, T. H., this 15th day of May, 1951.

HOWARD K. HODDICK,
Acting United States Attorney,
District of Hawaii,

/s/ By WINSTON C. INGMAN,
Assistant United States Attorney,
District of Hawaii.

Acknowledgment of Receipt attached.

[Endorsed]: Filed June 11, 1951. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF RECORD TO BE
PRINTED ON APPEAL

Comes now James M. Alsup, defendant-appellant above named, by Howard K. Hoddick, Acting United States Attorney for the District of Hawaii, and

hereby designates for inclusion in the printed record on appeal, the following:

1. Complaint filed September 7, 1949.
2. Answer filed January 13, 1950.
3. Stipulation of Facts (and exhibits attached) filed October 5, 1950.
4. Opinion of the Court filed February 23, 1951.
5. Judgment filed March 19, 1951.
6. Notice of Appeal filed May 4, 1951.
7. Statement by Appellant of Points to be Relied upon on Appeal.
8. Stipulation as to Record.
9. Certificate of Clerk.
10. This Designation of Record to be Printed on Appeal.

Dated: Honolulu, T. H., this 22nd day of May, 1951.

HOWARD K. HODDICK,
Acting United States Attorney,
District of Hawaii,

/s/ By WINSTON C. INGMAN,
Assistant United States Attorney,
District of Hawaii.

Acknowledgment of Receipt attached.

[Endorsed]: Filed June 11, 1951. Paul P. O'Brien,
Clerk.

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